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NO. COA09-1072

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

IN THE MATTER OF:

T.I., M.I., J.H.,
J.H. and K.H.

Durham County
Nos. 07 J 3-7

Appeal by respondent-mother from orders entered 18 March and 6 April 2009 by Judge Ann McKown in Durham County District Court. Heard in the Court of Appeals 10 November 2009.

Deputy County Attorney Thomas W. Jordan, Jr., for Durham County Department of Social Services petitioner-appellee.

Pamela Newell Williams for guardian ad litem respondent-appellee.

Betsy J. Wolfenden for respondent-mother appellant.

HUNTER, JR., Robert N., Judge.

Respondent-mother appeals from orders terminating her parental rights to her five children, Timothy (T.I.), Mark (M.I.), John (J.H.), Jacob (J.H.) and Katie (K.H.)¹ On appeal, respondent-mother solely contends that the trial court erred in concluding that termination of her parental rights is in the best interest of the children. We disagree with respondent-mother and affirm the decision of the trial court.

¹The juveniles names have been changed to protect their identity.

I. Factual Background

On 5 January 2007, the Durham County Department of Social Services (DSS) filed juvenile petitions alleging that Timothy, Mark, John, Jacob and Katie were neglected and abused juveniles. The petition alleged the following: Respondent-mother received information from her children that Quinton S., a male friend of respondent-mother, was hitting Timothy, Mark, John and Jacob with a belt and striking the children in the chest with his hand. Despite the children's statements, respondent-mother continued to allow Quinton S. to care for the children and took no steps to prevent Quinton S. from repeating this injurious conduct.

On 26 December 2006, while in the care of Quinton S., Jacob received injuries which required hospitalization. While Jacob was hospitalized, the hospital personnel found a tear to his liver, pancreatic injury, and multiple inflicted injuries to his ears, chest, back, arm, face, and leg. Hospital personnel concluded that forceful abdominal blows would have been necessary to cause the injuries. When asked who caused his injuries, Jacob named "Q" as the person who hurt his side. After Jacob's hospitalization and despite respondent-mother's knowledge of the children's injuries and the children's fear of Quinton S., respondent-mother continues to have a romantic relationship with Quinton S. and allow him to care for the children.

The 5 January 2007 petition further alleged that respondent-mother is addicted to cocaine and has been diagnosed with bipolar disorder. On the date the petition was filed, respondent-mother

was not receiving treatment for the addiction or her bipolar disorder. Her addiction and poor mental health are alleged to impair her judgment and her ability to provide for her children's safety.

Specifically, the petition alleges that Katie was born cocaine positive as a result of respondent-mother's drug addiction. Based on the January 2007 petition, DSS took nonsecure custody of the children. Timothy and Mark were placed at Agape Corner, a Christian child placement center, and John, Jacob and Katie were placed in foster homes.

The trial court held an adjudication hearing in May 2007. The trial court adjudicated Timothy, Mark, John and Katie neglected juveniles, and Jacob an abused and neglected juvenile. The trial court continued nonsecure custody with DSS. The disposition hearing was held in July 2007. By order filed 15 August 2007, the trial court found that respondent-mother was participating in the Family Drug Treatment Court and that Timothy, Mark and John were participating in mental health therapy. The trial court concluded Timothy and Mark should remain in their placements at Agape Corner and that John, Jacob and Katie should remain in their foster care placements. The trial court ordered that respondent-mother participate in Family Drug Treatment Court, receive a psychiatric evaluation, and participate in substance abuse treatment. The court also ordered that respondent-mother be drug and alcohol free, obtain and maintain stable housing and employment, and complete a parenting program.

The trial court held review hearings in September 2007, November 2007, December 2007, February 2008 and March 2008. On 12 September 2008, DSS filed motions to terminate respondent-mother's parental rights based upon grounds of neglect (N.C. Gen. Stat. § 7B-1111(a)(1) (2007)), willfully leaving the children in foster care without showing reasonable progress (N.C. Gen. Stat. § 7B-1111(a)(2)), and willfully failing to pay a reasonable portion of the cost of care for the children (N.C. Gen. Stat. § 7B-1111(a)(3)). In the motions, DSS alleged the following: (1) respondent-mother was noncompliant with the court ordered disposition; (2) respondent-mother was terminated from the Family Drug Treatment Court; (3) respondent-mother was participating in Duke Family Care Program for her drug treatment, but had not attended her individual sessions consistently; and (4) that respondent-mother had tested positive for alcohol in May 2008.

The trial court held a hearing on the termination motions in December 2008. The trial court entered an adjudication order for Timothy and Mark, an adjudication order for John, and an adjudication order for Jacob and Katie. By these three orders filed 13 January 2009, the trial court found grounds existed to terminate the parental rights of respondent-mother to all of her children under N.C. Gen. Stat. § 7B-1111(a)(1) and (a)(2). The trial court conducted dispositional hearings in February 2009. By three separate disposition orders filed 6 April 2009, the trial court concluded that it was in the best interests of Timothy, Mark, John, Jacob and Katie to terminate respondent-mother's parental

rights. In determining that termination of respondent-mother's parental rights was in the best interest of the children, the court considered (1) the children's ages; (2) their two plus years in foster care; (3) the bond with the prospective adoptive parent; (4) the weakened bond with their mother; (5) the lack of bond with the father; and (6) the likelihood of adoption. Respondent-mother now appeals the trial court's determination.

II. Best Interests of the Children

On appeal, respondent-mother contends the trial court erred in its determination of the children's best interest pursuant to N.C. Gen. Stat. § 7B-1110. We disagree.

A trial court must consider the following factors in determining whether terminating the parent's parental rights is in the juvenile's best interest:

- (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 (2007). A determination of the child's best interests lies within the sound discretion of the trial court and is reviewed only for abuse of discretion. *In re J.A.P.*, 189 N.C. App. 683, 693, 659 S.E.2d 14, 21 (2008). The trial court

abuses its discretion "'when the challenged actions are manifestly unsupported by reason.'" *In re R.B.B.*, 187 N.C. App. 639, 648, 654 S.E.2d 514, 521 (2007) (citation omitted), *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2008).

Here, the trial court made findings of fact to support the court's determination that it was in the best interests of Timothy and Mark, to terminate the respondent-mother's parental rights:

9. Addiction is difficult. There is no set time line for someone to overcome their addiction. The mother continues to attend Narcotics Anonymous meetings. The children have been in care for over two years at this time.

10. The mother's visits with T and M were suspended in November, 2007.

11. The children are ten and eight years old.

12. The permanent plan recommended is adoption. Termination of parental rights will aid in the accomplishment of the permanent plan in that the children are not free for adoption.

13. The children's likely adoptive parent is Rommy Woodley. The children recently have been placed in her care. She previously cared for both children for over a year when she was associated with Agape Corner. Both boys had been spending weekends with her since the summer of 2008 with no concerns noted. A bond exists between both children and Rommy Woodley. She desires to adopt both T and M. The children have been in foster care for over 2 years.

14. There is a bond between the children and the child[ren's] biological mother. There only has been telephone contact between the child[ren] and [their] mother for over a year. The bond between the children and their mother has been weakened by not seeing them for over a year.

. . . .

17. In determining that the child's best interests were that parental rights be terminated, the court considered the children's ages, their two plus years in foster care, the bond with the prospective adoptive parent, the weakened bond with their mother, the lack of bond with the father and the likelihood of adoption.

As to John, the trial court found:

9. Addiction is difficult. There is no set time line for someone to overcome their addiction. The mother continues to attend Narcotics Anonymous meetings. The child has been in care for over two years at this time.

10. The mother's visits with J were suspended in November, 2007.

11. The child is six years old.

12. The permanent plan recommended by the GAL is adoption. Termination of parental rights will aid in the accomplishment of the permanent plan in that the child is not free for adoption.

13. The child's possible adoptive parent is the child's foster parent. The [child] has been living with the foster parent for 2 years. A bond exists between the child and the foster parents. The foster parents are experiencing financial difficulties which just came to the attention of Durham DSS. The child continues to have mental health issues but has shown improvement. He has been in foster care for one third of his life.

14. There is a bond between the child and the child's biological mother. There only has been telephone contact between the child and his mother for over a year, and the bond is damaged.

. . . .

16. The child is young and continues to progress in improving his behavior. He is

adoptable, and there is a likelihood of adoption.

17. In determining that the child's best interests were that parental rights be terminated the court considered the child's age, his two plus years in foster care, the damaged bond with his mother and the likelihood of adoption

As to Jacob and Katie, the trial court found:

7. Addiction is difficult. There is no set time line for someone to overcome their addiction. The mother continues to attend Narcotics Anonymous meetings. The children have been in care for over two years at this time.

8. The mother visits with J and K. A bond exists between the children and their mother.

9. The children are four and two and one half years old. Most of K's life has been in foster care. Over half of J's life has been in foster care.

10. The permanent plan recommended is adoption. Termination of parental rights will aid in the accomplishment of the permanent plan in that the children are not free for adoption.

11. The children's likely adoptive parents are Gwen Mabry and Michelle Mabry. They are the current foster parents. A bond exists between both children and Gwen Mabry and Michelle Mabry. Both Gwen Mabry and Michelle Mabry desire to adopt the children. They are a same sex couple, and both foster parents being listed as the parents of both children is not a legal option. The court takes judicial notice that adoptions can occur by one member of a same sex couple adopting the child. Thus, either of the foster parents can adopt the children. The court takes judicial notice that Gwen Mabry and Michelle Mabry could enter into a co-parenting agreement.

12. There is a bond between the children and the child[ren's] biological mother.

. . . .

14. In that both Gwen Mabry and Michelle Mabry wish to adopt the children, they are adoptable; and there is a likelihood of adoption.

15. In determining that the children's best interests were that parental rights be terminated the court considered the children's age, their two plus years in foster care, the children's bond with their mother and the bond with the prospective adoptive parent and likelihood of adoption.

Respondent-mother does not argue in her brief that these findings of fact are unsupported by the evidence. Consequently, respondent-mother has abandoned her assignments of error on these issues, and they are deemed binding on appeal. *See In re P.M.*, 169 N.C. App. 423, 424, 610 S.E.2d 403, 404-05 (2005) (concluding respondent had abandoned factual assignments of error when she "failed to specifically argue in her brief that they were unsupported by evidence"). Rather, respondent-mother argues that the trial court failed to consider the bond between her and the children. However, in the children's respective dispositional orders, the trial court made findings of fact regarding the bond between respondent-mother and Timothy and Mark in finding of fact 14, between respondent-mother and John in finding of fact 14, and between respondent-mother and Jacob and Katie in finding of fact 12. Further, based upon the trial court's unchallenged findings which reflect a rational reasoning process, we conclude that the trial court did not abuse its discretion in its determination that terminating the parental rights of respondent-mother was in the best interests of the children.

We affirm the trial court's order terminating respondent-mother's parental rights to her children.

Affirmed.

Judges MCGEE and GEER concur.

Report per Rule 30(e).