NO. COA09-637

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

IN THE MATTER OF:

I.L.

Pitt County
No. 08 JT 36

Appeal by respondent-mother from order entered 20 February 2009 by Judge G. Galen Braddy in Pitt County District Court. Heard in the Court of Appeals 24 August 2009.

*Nikki R. Walker, for petitioner-appellee, Pitt County Department of Social Services.*

*Karen A. Leahy for respondent-appellee, Guardian ad Litem.*

*Rebekah W. Davis for respondent-appellant, mother.*

ERVIN, Judge.

Respondent-Mother, Victoria L., appeals from an order entered by the trial court terminating her parental rights in her daughter, I.L. (Ivy).[1] After careful consideration of the briefs and record in light of the applicable law, we affirm the trial court's order.

Respondent-Mother has a substantial history of substance abuse and served an active sentence of four to five months for a drug-related felonious breaking or entering in 2006. Upon her release on 6 December 2006, Respondent-Mother resumed using controlled

[1] "Ivy" is a pseudonym used to protect the privacy of the juvenile and for ease of reading.

substances. Respondent Mother used drugs during the time that she was pregnant with Ivy.

Respondent-Mother was admitted to the Villages program on 31 January 2007 and "remained clean during her highly structured and monitored time at the Villages." However, "[u]pon her step down on [31 January 2008], she returned to using drugs."

On or about 20 February 2008, an individual named Michael Perry traveled to Pitt County in order to meet Respondent-Mother, whom he had encountered on the Internet, and to make a court appearance on the following morning. Perry had been in contact with Respondent-Mother for about three weeks.

After meeting Perry in person for the first time at about 7:00 p.m. and remaining with him for about 45 minutes, Respondent-Mother left Ivy in his care for the ostensible purpose of going to the store. Respondent-Mother had not returned by 10:00 the next morning, causing Perry to contact law enforcement, an action that led to the involvement of the Pitt County Department of Social Services (DSS). DSS took custody of Ivy on 21 February 2008 and filed a juvenile petition alleging that she was a neglected and dependent juvenile the following day.

After Ivy was taken into DSS custody, Respondent-Mother had a visit with her on 4 March 2008, which went well. "[A] plan was made for [Respondent-Mother] to participate in NA/AA, [s]ubstance abuse treatment, long-term residential treatment program to address issues that caused [Ivy] to be placed in [DSS] custody." After appearing in court on 6 March 2008, DSS did not know where

Respondent-Mother was again until October. During that time, Respondent-Mother was "on the run from law enforcement and chose to remain in hiding until her arrest."

After a hearing held on 24 April 2008, the trial court adjudicated Ivy to be a neglected and dependent juvenile. At the dispositional stage of the proceedings, the trial court found that Respondent-Mother had been residing in the Villages due to substance abuse; that she tested positive for cocaine and THC on 1 March 2008; that she had allegedly entered a male's vehicle on 9 March 2008; that she had been terminated from the Villages program for missing more than three appointments during the week of 9 March 2008; that she had not visited Ivy since 4 March 2008, a period which included the child's first birthday; that she had emptied her bank account and failed to make contact with her employer; and that she had failed to make herself available to DSS or the Villages' staff since 9 March 2008. As a result, the trial court determined that the plan of care for Ivy would be reunification with Respondent-Mother, with a concurrent plan of guardianship with a relative, and ordered Respondent-Mother to contact DSS immediately and to submit to random drug tests.

On 28 August 2008, the trial court held a permanency planning hearing. By means of an order dated 23 September 2008, the trial court found that Respondent-Mother had failed to make herself available to DSS or the Villages' staff since 9 March 2008 and that a warrant had been issued for Respondent-Mother's arrest based on allegations that she had violated the terms and conditions of her

probation. In addition, the trial court changed the permanent plan for Ivy to custody with a parent/relative with a concurrent plan of adoption and ordered DSS to file a petition seeking the termination of Respondent-Mother's parental rights.

On 16 September 2008, DSS filed a petition to terminate Respondent-Mother's parental rights in Ivy.[2] DSS alleged that Respondent-Mother's parental rights were subject to termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)(neglect); N.C. Gen. Stat. § 7B-1111 (a)(3) (failure to pay a reasonable portion of the cost of Ivy's care); N.C. Gen. Stat. § 7B-1111(a)(6)(dependency); and N.C. Gen. Stat. § 7B-1111 (a)(7)(willful abandonment).

Respondent-Mother was incarcerated in the Pitt County Detention Center in September 2008 for violating the terms and conditions of her probation. Respondent-Mother had been "clean" since entering that facility. Respondent-Mother was transferred to the custody of the North Carolina Department of Correction on 1 October 2008.

The trial court held another permanency planning hearing on 20 November 2008. In an order entered on 25 November 2008, the trial court found that Respondent-Mother's whereabouts were unknown from 9 March 2008 until 23 October 2008, when DSS was notified that she had been incarcerated in the North Carolina Correctional Institute

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[2] DSS also sought to terminate the parental rights of Ivy's father in the 16 September 2008 petition. As a result of the fact that no particular individual had been identified as Ivy's father by the date of the entry of the termination order, the trial court terminated the parental rights of Ivy's unknown father at that time.

for Women since 1 October 2008. The trial court further found that Respondent-Mother had informed DSS that she had been running from the police; that she would be in prison until at least March 2009; and that she claimed to have refrained from using drugs during the period in which she was missing. The trial court changed the permanent plan to adoption in the 25 November 2008 order.

The trial court conducted a hearing on the issues raised by the termination petition on 22 January 2009. In an order filed on 20 February 2009, the trial court recited the history of Respondent-Mother's parental difficulties and also found as a fact:

> 24. That the [Respondent-Mother] entered the DART Program on December 8, 2008, which is a 90-Day program.
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> 25. That the [Respondent-Mother] has a history of depression, and she discussed her depression with a psychiatrist while in the Villages.
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> . . . .
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> 27. That the [Respondent-Mother] has had no contact with the juvenile since March 4, 2008 and no contact with [DSS] from March 4, 2008 until October 24, 2008.
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> 28. That the [Respondent-Mother], by her own testimony, had abandoned the juvenile.
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> . . . .
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> 30. That the [Respondent-Mother] also engaged in prostitution to support herself and her drug habit . . . .

Based on these findings, none of which have been challenged on appeal and which are, for that reason, deemed to have adequate evidentiary support, *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133, *disc. rev. denied*,306 N.C. 565 (1982), *appeal dismissed*

*sub nom., Moore v. Guilford County Dep't of Social Services*, 459 U.S. 1139, 103 S.Ct. 776 (1983), the trial court concluded that all three grounds for termination of Respondent-mother's parental rights alleged in DSS's petition existed. At the dispositional stage of the proceeding, the trial court concluded that the termination of Respondent-Mother's parental rights would be in Ivy's best interests. Respondent-mother noted an appeal to this Court from the trial court's termination order.

In her sole argument on appeal, Respondent-Mother contends that the trial court abused its discretion by failing to consider the relatively short time that Respondent-Mother had to demonstrate her ability to properly parent Ivy, the relative youth of both Respondent-Mother and Ivy, and the importance of Ivy's Lumbee heritage in deciding that terminating Respondent-Mother's parental rights was in Ivy's best interest. We disagree.

In determining whether terminating a parent's parental rights is in a juvenile's best interest, the trial court is required to consider the following factors:

> (1) The age of the juvenile.
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> (2) The likelihood of adoption of the juvenile.
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> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
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> (4) The bond between the juvenile and the parent.
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> (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) (2008). In explaining its decision that Respondent-Mother's parental rights in Ivy should be terminated, the trial court made the following findings of fact:

> 51. The juvenile is 21 months old. Since she was 10 months old, she has been in a foster care placement. She has been placed with the Atkinson's since June 2008.
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> 52. The likelihood of adoption of the juvenile is great. The Atkinsons have provided a safe, permanent home for the juvenile that has been very nurturing for her. They have provided for this juvenile's medical needs, and they have come to court to express their desire to adopt this juvenile and have the financial means to adopt this juvenile. If the termination of parental rights is ordered, then the Atkinson's will be immediately proceeding with obtaining a petition for adoption of this juvenile.
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> 53. Termination of parental rights will aid in the accomplishment of the permanent plan for this juvenile, which is adoption, and is necessary to achieve permanence for this child through adoption. The permanent plan was originally reunification with the [Respondent-Mother], and the [Respondent-Mother] has battled drug addiction for several years and had various relapses. The permanent plan was changed to custody to a non-removal parent/relative with a concurrent plan of adoption. Custody to a non-removal parent was not possible as the Respondent putative father was determined to not be the father, and the only way for adoption to be possible is for the termination of parental rights to happen.
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> 54. The bond between the juvenile and [Respondent-Mother] is non-existent. The juvenile was born positive for cocaine because of the [Respondent-Mother's] drug

> use while she was pregnant with this juvenile. The [Respondent-Mother] left this juvenile after one visit in March 2008, and she left this juvenile with a complete stranger. The [Respondent-Mother] placed drugs as a priority over her own child. As a result of this, the Court cannot find that any substantial bond exists.
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> 55. The Court is very impressed with the quality of the relationship between the juvenile and her foster parents as the Atkinson's have had this juvenile in their home since June 2008, have provided for her medical needs, and have made her feel safe and secure. This juvenile also knows their extended family and has bonded with her foster brother, Jordan. Her foster brother has also accepted her as his sister. This juvenile has come to depend upon the Atkinsons to provide for her needs, and has become attached to them through her dependency.
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> 56. Other relevant considerations include the fact that the [Respondent-Mother] was on the run from the law from March 2008 to September 2008 in order to avoid arrest, and during that time, she was also running away from her daughter and from the responsibility of raising her daughter. Although it has been mentioned that the Respondent Mother has Lumbee Indian heritage, the Lumbee Indians have not been federally recognized at this time. Also, the Respondent Mother offered no supporting documentation of her heritage other than her statement at this hearing.

Respondent-Mother does not challenge these findings of fact as lacking adequate evidentiary support. For that reason, they are deemed correct and supported by sufficient evidence. *Moore*, 306 N.C. at 404, 293 S.E.2d at 133. Any such contention would be meritless, given that there is ample support for the trial court's findings of fact in the trial court's prior orders, the Guardian ad

Litem's court reports, and the testimony of Respondent-Mother, Social Worker Nikki Mears, and Ivy's foster mother. Perhaps for that reason, Respondent-Mother focuses her challenge to the termination order on a contention that the trial court erred by failing to consider certain factors that she believes to be relevant in its dispositional analysis.

First, Respondent-Mother argues that the trial court failed to consider what she believes to have been the relatively short interval between the entry of the adjudication order and the termination hearing in deciding whether her parental rights in Ivy should be terminated. In essence, Respondent-Mother contends that the trial court did not give her an adequate "chance to overcome her addiction" before terminating her parental rights. According to Respondent-Mother, by the time that she had come into the custody of the Department of Correction after approximately six months on the run, the juvenile court system had already given up on the idea of reunifying her with her daughter and was moving steadily in the direction of terminating her parental rights. This aspect of Respondent-Mother's argument simply fails to focus on the proper issue. A trial judge faced with making a termination decision is not supposed to focus on the parent's interests. On the contrary, "[t]he best interest of the children is the polar star by which the discretion of the court is guided." *Bost v. Van Nortwick*, 117 N.C. App. 1, 8, 449 S.E.2d 911, 915 (1994) (internal citations and quotations omitted), *appeal dismissed*, 340 N.C. 109, 458 S.E.2d 183 (1995). In deciding that Ivy's interests would be

best served by terminating Respondent-Mother's parental rights, the trial court found, based in large part on Respondent-Mother's lengthy disappearance in an effort to "hide out" from law enforcement, that the bond between mother and daughter was "non-existent." Given that the trial court's findings of fact, which have adequate evidentiary support, reflect consideration of the statutorily-mandated factors and the fact that Respondent-Mother has not contended that any violations of statutorily-mandated time lines have occurred, the trial court's decision not to refrain from terminating Respondent-Mother's parental rights in order to give her additional time within which to attempt to overcome her substance abuse problems was a discretionary decision which this Court lacks authority to disturb on appeal given the overwhelming evidence of Respondent-Mother's poor performance as a parent and the benefits that the record suggests will accrue to Ivy from the adoptive process.

Next, Respondent-Mother challenges the trial court's failure to consider the relative youth of both Respondent-Mother and Ivy in making its dispositional decision. At the time of the termination hearing, Respondent-Mother was 23 years of age, some five years above the age of majority. Nothing in the literal language of the relevant statutory provisions or appellate decisions requires the trial court to consider or make explicit findings about Respondent-Mother's age given the absence of any evidence tending to show that she should be treated as anything other than a fully competent adult. *Compare In re J.G.B.*, 177 N.C. App. 375, 384, 628 S.E.2d

450, 456-57 (2006) (trial court should consider a mother's age-related limitations in a case when the mother was seventeen years old and was herself in DSS custody). According to Finding of Fact No. 51, the trial court did consider Ivy's age in accordance with N.C. Gen. Stat. § 7B-1110(a)(1). In addition, as we have already noted, the trial court addressed the absence of a bond between Respondent-Mother and Ivy in Finding of Fact No. 54. Although Respondent-Mother argues vigorously that both Respondent-Mother and Ivy are "too young to dismiss the possibility of reunification;" that, "[i]f it works, then the lives of both will be enhanced;" and that, "[i]f it does not work, [Ivy] will not be damaged," this is the sort of argument that is properly directed to the trial court which the trial court was free, given the overwhelming evidence of Respondent-Mother's deficient performance as a parent and the potential benefits to Ivy of adoption, to reject without risk of appellate reversal.

Finally, Respondent-Mother contends that the trial court failed to adequately consider her Lumbee heritage in making the decision to terminate her parental rights in Ivy. The trial court did, however, address this issue, having stated in Finding of Fact No. 56 that, "[a]lthough it has been mentioned that the Respondent Mother has Lumbee Indian heritage, the Lumbee Indians have not been federally recognized at this time" and "the Respondent Mother [has] offered no supporting documentation of her heritage other than her statement at this hearing." In essence, the trial court rejected Respondent-Mother's argument in reliance upon her Lumbee heritage

because the Lumbee are not a federally-recognized tribe, thereby rendering the Indian Child Welfare Act inapplicable to this proceeding, and because it was not satisfied with Respondent-Mother's proof of her Lumbee ancestry. As we have noted a number of times, Respondent-Mother has not contended that the trial court's findings of fact lack adequate evidentiary support, so any challenge that Respondent-Mother lodges against this aspect of the trial court's termination decision must rest upon some other legal theory.

After careful consideration, we conclude that both components of the trial court's discussion of the issues raised by Respondent-Mother's claim of Lumbee heritage in its dispositional decision are consistent with this Court's precedent. First, we have previously noted the lack of federal recognition accorded to the Lumbee. *In re A.D.L.*, 169 N.C. App. 701, 708, 612 S.E.2d 639, 644, *disc. rev. denied*, 359 N.C. 852,619 S.E.2d 402 (2005) (holding that, while "[t]he Lumbee are a state-recognized Indian Tribe," "the children," who were "registered members of the Lumbee Tribe," "are not members of a federally recognized tribe, and therefore, the provisions of [the Indian Child Welfare Act] do not apply"). Secondly, this Court has held that a trial court has the authority to decline to credit the testimony of a witness claiming, without additional support, to belong to a particular Native American tribe. *In re Williams*, 149 N.C. App. 951, 957, 563 S.E.2d 202, 205 (2002) (rejecting a claim that a particular litigant was entitled to the protection of the Indian Child Welfare Act on the grounds that the

litigant "fail[ed] to provide any supporting evidence to prove the Act's applicability to him, such as documentation or the testimony of a representative from his tribal government" and that, while "there may be other methods by which a party can prove that the Act applies, this equivocal testimony of the party seeking to invoke the Act, standing alone, is insufficient to meet this burden"); *see also In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (it is the trial judge's duty to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom"). Thus, the trial court's findings of fact provide ample evidence that it considered and rejected this aspect of Respondent-Mother's argument for lack of adequate legal and factual support. Even if the trial court did not, contrary to our understanding of the termination order, reject Respondent-Mother's argument on credibility grounds, there is ample evidence in the record of her deficient performance as a parent and the benefits that would result to Ivy from an adoption to preclude an appellate reversal of any discretionary decision that the trial court may have made to the effect that other factors outweighed Respondent-Mother's heritage in the ultimate dispositional decision. As a result, the trial court did not err in the manner in which it addressed Respondent-Mother's heritage-based argument.

Thus, for the reasons stated above, we conclude that the trial court did not abuse its discretion in determining that Respondent-Mother's parental rights in Ivy should be terminated. The trial

court's findings of fact, which have not been subject to challenge on appeal, and conclusions of law demonstrate that it considered the factors that are enumerated in N.C. Gen. Stat. § 7B-1110(a) and engaged in a rational decision-making process before determining that Respondent-Mother's parental rights in Ivy should be terminated. As a result, the trial court's order terminating Respondent-Mother's parental rights in Ivy should be, and hereby is, affirmed.

Affirmed.

Judges Stephens and Stroud concur.

Report per Rule 30(e).