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NO. COA09-669

NORTH CAROLINA COURT OF APPEALS

Filed: 3 November 2009

IN THE MATTER OF:
C.B. and S.B.

Macon County
Nos. 07 JT 35, 36

Appeal by respondent-father from order entered 2 March 2009 by Judge Richlyn B. Holt in Macon County District Court. Heard in the Court of Appeals 28 September 2009.

William R. Shilling for petitioner-appellee Macon County Department of Social Services.

Michael E. Casterline for respondent-appellant father.

Robinson, Bradshaw & Hinson, P.A., by Ty E. Shaffer, for guardian ad litem.

ELMORE, Judge.

Respondent-father appeals from a district court order terminating his parental rights to his two daughters, twelve-year-old C.B. and ten-year-old S.B. After careful review, we affirm.

On 6 June 2007, the Macon County Department of Social Services (DSS) filed juvenile petitions alleging that C.B. and S.B. were neglected and dependent juveniles. On the same day, the trial court entered a non-secure custody order, which gave DSS custody of the two girls, and they were placed together in a licensed group home.

The trial court adjudicated C.B. and S.B. neglected and dependent in an adjudication order entered 28 August 2007. The adjudication of neglect was based on the following findings: (1) the mother's live-in boyfriend subjected the children to inappropriate discipline; (2) the mother failed to provide proper medical care for S.B.; and (3) respondent-father did not have a driver's license, failed to pay a child support arrearage, and failed to fulfill the requirements of his case plan. The trial court entered a dispositional order on the same day, which placed C.B. and S.B. with their maternal grandparents, but allowed DSS to retain legal custody. The trial court implemented a permanent plan of reunification and ordered each parent to complete various goals designed to accomplish this end.

The trial court conducted a review hearing on 28 and 29 May 2008. At the time of the hearing, the girls had been in new placements for a few months. In January 2008, the girls had been placed in separate level II therapeutic foster homes based on their mental health needs. The trial court found that the mother had made some progress on her case plan, but continued to have a relationship with her live-in boyfriend, the major stressor in the girls' lives. As a result, the trial court ceased reunification efforts with the mother. Although respondent-father had addressed only a few of the requirements in his case plan, the trial court maintained a permanent plan of reunification with respondent-father.

The trial court conducted another review hearing on 3 November 2008 and entered an order on 13 November 2008. In the order, the trial court found that respondent-father had completed a mental health assessment, but had not completed a number of the provisions in his case plan. He had failed to comply with any of the recommendations in his assessment, failed to complete parenting classes, failed to receive counseling for alcohol abuse, and visited with the children only on one occasion since May 2008. Based on the foregoing, the trial court ceased reunification efforts with respondent-father and directed DSS to file a motion to terminate parental rights.

On 1 December 2008, DSS filed a motion to terminate both parents' rights to C.B. and S.B. on the following grounds: (1) neglect and (2) willfully leaving the juveniles in foster care for over twelve months without showing reasonable progress in correcting the conditions which led to removal. Respondent-father filed an answer on 6 February 2008, admitting a majority of the allegations contained in the motion.

The trial court conducted an adjudicatory and dispositional hearing in the matter on 23 February 2009. During the adjudication hearing, a DSS social worker and a therapist testified on behalf of DSS. Respondent-father testified on his own behalf. Following the adjudication testimony, the trial court concluded that the alleged grounds existed to terminate both parents' parental rights to C.B. and S.B. The trial court then proceeded to the disposition hearing, at which a DSS social worker and the guardian *ad litem*

(GAL) testified. The trial court concluded that it was in the children's best interests to terminate both parents' parental rights to the children. Respondent-father gave timely notice of appeal from the orders. The mother does not appeal.

Proceedings to terminate parental rights are conducted in a two-stage process: (1) the adjudication stage, during which the petitioner is required to prove the existence of grounds for termination by clear, cogent, and convincing evidence, and (2) the disposition stage, during which the court's ability to terminate parental rights is discretionary. N.C. Gen. Stat. §§ 7B-1109, -1110 (2007); *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986). Respondent-father raises only one argument on appeal, and it is related to the trial court's disposition order. He contends that the trial court erred in determining that termination of parental rights was in the best interests of C.B. and S.B.

After an adjudication determining that grounds exist for terminating parental rights, a trial court must consider the following factors in determining whether termination 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(a) (2007). We review the trial court's determination that a termination of parental rights is in the best interest of the juvenile for an abuse of discretion.[1] *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "Abuse of discretion exists when the challenged actions are manifestly unsupported by reason." *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (quotations and citation omitted).

In its disposition order, the trial court made the following relevant findings of fact regarding the criteria listed in N.C. Gen. Stat. § 7B-1110(a):

> 48. That in early September 2008, C.B. was hospitalized . . . for approximately one week for mental health reasons. That while there it was suggested that she may have thyroid problems and should see an endocrinologist. [C.B.] has since been seen by an endocrinologist.
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> 49. That C.B. has been diagnosed as having major depressive disorder and oppositional defiant disorder. That S.B. has been diagnosed as having ADHD and Trichotillomania, which causes [S.B.] to act out by pulling out the hair on her head and her eyebrows [and] eyelashes.
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> 50. That when S.B. came into DSS custody she had pulled out hair on her head and was bald from the middle of her head forward. She has now regrown her hair and her condition has generally been under

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[1] Respondent-father suggests that the abuse of discretion standard is no longer applicable to the trial court's best interest determination, in light of the legislature's 2005 revisions to N.C. Gen. Stat. § 7B-1110. However, respondent-father provides no support for this argument. Indeed, we have continually applied the abuse of discretion standard to the best interests analysis and therefore disagree with respondent-father's contention since the 2005 amendments went into effect. *See, e.g.*, *In re J.A.P. & I.M.P.*, 189 N.C. App. 683, 693, 659 S.E.2d 14, 21 (2008).

control but has recently resurfaced in December 2008; her therapists are refocusing on this issue.

52. That the father has been incarcerated from time to time over the past year related to child support issues.

54. That the father has not talked with DSS or the children's medical providers regarding the children's medical and psychological needs [and] issues; he has not called them and is not familiar with the recommendations of any mental or medical professionals with respect to the conditions from which the children suffer and with which the minor children are contending.

57. . . . C.B. has expressed to the DSS Social Worker her view that she wishes to be adopted, but wants to meet the adoptive family first.

58. . . . [S.B.] wants to see her father and sister, would like to live with her father if he does what he is supposed to, but if that is not an option then she wants to be adopted either by her grandparents or the [foster] family.

59. On January 11, 2008, [C.B.] was placed in [a] level II therapeutic foster home . . . . [The foster mother] does an excellent job with providing care for [C.B.] . . . .

60. On October 3, 2008, [S.B.] was placed in [a] level II therapeutic foster home. The [foster] family does an excellent job with providing care for [S.B.] . . . .

63. That based on the evidence and testimony presented, C.B. and S.B. [are] working towards being adoptable children.

64. That the bond between the minor children and [respondent-father] is minimal.

66. That the Permanent Plan for the minor children continues to be termination of parental rights and adoption, and this is

> the best plan for the minor children to achieve a safe, appropriate, and permanent home within a reasonable period of time.

The trial court also made findings of fact detailing respondent-father's failure to visit the children, failure to pay child support, lack of a driver's license, lack of appropriate housing, and failure to present a budget to DSS, which was part of his case plan.

Respondent-father does not argue that the trial court neglected to consider all the factors listed in N.C. Gen. Stat. § 7B-1110. Indeed, he even admits that the trial court properly considered the factors, as required by statute. Instead, respondent-father contends that the trial court incorrectly determined that termination was in the children's best interests. Essentially, respondent-father suggests that the trial court should have given more weight to the children's likelihood of adoption in determining whether termination was in their best interests. We disagree. Contrary to respondent-father's suggestion, a trial court is not required to find that a child is adoptable before terminating a parent's parental rights. *See In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983) ("It suffices to say that such a finding [of adoptability] is not required in order to terminate parental rights.").

Respondent-father cites to *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004), in support of his argument. In *J.A.O.*, we held that the trial court abused its discretion in terminating the mother's parental rights to her child, Jeff. *Id.* at 227, 601

S.E.2d at 230. At the time of the termination proceedings in *J.A.O.*, Jeff was fourteen years old and had a history of being verbally and physically aggressive and threatening. *Id.* at 227-28, 601 s.E.2d at 230. He had been diagnosed with several disorders, including bipolar disorder, ADHD, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension. *Id.* As a result of his special needs, Jeff had been in foster care since the age of eighteen months, had been shuffled through nineteen different treatment centers, and had no prospective adoptive parents, including his foster family at the time. *Id.* In reviewing the trial court's best interest determination, we made the following analysis:

> Respondent, Jeff's biological mother, is the only family member connected to and interested in Jeff. His biological father was not present at the termination proceeding and could not be located through judicial summons. Although Jeff's foster family have shown support and care for him, they are unwilling to adopt him and undertake the important responsibilities associated with caring for an individual who possesses significant and life-long debilitating behaviors. . . . [I]t is highly unlikely that a child of Jeff's age and physical and mental condition would be a candidate for adoption, much less selected by an adoptive family.

Id. We further reasoned that

> [a]fter 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 [Jeff] further adrift.

Id. at 228, 601 S.E.2d at 230 (alteration in original) (quotations and citation omitted). Thus, we concluded that it was not in Jeff's best interest to become a "legal orphan" and held that the trial court abused its discretion by terminating the mother's parental rights. *Id.*

The instant case is readily distinguishable from *J.A.O.* To begin, C.B. and S.B., while still on the older side of the age spectrum in termination of parental rights cases, are younger than Jeff was at the time of termination. Although C.B. and S.B. both have mental health issues, their conditions are nowhere near as serious as Jeff's. Indeed, the children's conditions are likely to improve in the future, as one of the major stressors in their lives, their mother's live-in boyfriend, was eliminated when their mother's parental rights were terminated. Furthermore, the trial court in *J.A.O.* acknowledged that, given Jeff's mental health issues and age, he was unlikely to be adopted. Here, the social worker testified that the children were "likely" to be adopted and that "[t]hey need to continue with their treatment[,] but, hopefully after that gets settled and everything calms down, they'll be adoptable." The social worker also testified that it was her opinion that terminating respondent's parental rights would "aid in the accomplishment of the permanent plan of adoption."

Respondent's behavior is also markedly different from the behavior of the mother in *J.A.O.*, who had a bond with Jeff and had made progress in correcting the conditions that led to the petition. *See J.A.O.*, 166 N.C. App. at 224, 601 S.E.2d at 228.

Here, respondent has made almost no effort to see the children, learn about their medical needs, make progress on his case plan, or establish an appropriate home for the girls. Indeed, the findings show that any bonds between respondent and the girls were minimal, and that neither girl expressed an overriding desire to be reunited with their father. C.B. stated that she wished to be adopted; S.B. stated that she was willing to be adopted by her grandparents or her foster family, but would live with her father "if he does what he is supposed to do."

Lastly, the GAL in *J.A.O.* recommended that the mother's parental rights to Jeff not be terminated, and the trial court terminated her rights despite the recommendation. *J.A.O.*, 166 N.C. App. at 225, 601 S.E.2d at 229. Here, the GAL agreed that termination of respondent's parental was in the girls' best interests. Accordingly, *J.A.O.* is distinguishable from the instant case and we hold that the trial court did not abuse its discretion by concluding that terminating respondent's parental rights was in the best interests of C.B. and S.B. Accordingly, we affirm the decision of the trial court.

Affirmed.

Chief Judge MARTIN and Judge BEASLEY concur.

Report per Rule 30(e).