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NO. COA09-693

NORTH CAROLINA COURT OF APPEALS

Filed: 3 November 2009

IN THE MATTER OF:

T.G.W.,
Minor Child.

Buncombe County
No. 08 JT 271

Appeal by respondent from judgment entered 16 March 2009 by Judge Gary S. Cash in Buncombe County District Court. Heard in the Court of Appeals 14 September 2009.

John C. Adams for petitioner-appellee.

Carol Ann Bauer for respondent-appellant.

Michael N. Tousey for guardian ad litem.

GEER, Judge.

Respondent mother appeals from the judgment terminating her parental rights to her son, T.G.W. ("Troy").¹ On appeal, respondent argues only that the trial court abused its discretion in deciding that her child's best interests would be served by termination of her parental rights and adoption as opposed to guardianship with a relative. We hold that the trial court's decision does not constitute an abuse of discretion, and, therefore, we affirm.

¹The pseudonym "Troy" is used throughout this opinion to protect the minor's privacy and for ease of reading.

Facts

The Buncombe County Department of Social Services ("DSS") received a Child Protective Services report indicating that respondent had recently given birth to Troy. The report noted that respondent had a history of mental illness and domestic violence and had already lost custody of her four older children. The trial court granted guardianship of each of these children to various family members in 2003 and 2006.

A DSS social worker interviewed respondent at the hospital on the day after she gave birth to Troy. During the interview, the social worker noted that respondent had a flat affect and was initially uncooperative, but later admitted to domestic violence in her home between her and her uncle.

Respondent has been diagnosed with schizophrenia and mood disorder and depression with paranoid psychosis. She was referred to RHA Health Services ("RHA") for mental health services, but her case worker reported to DSS that respondent was non-compliant with her mental health treatment and was hostile during meetings.

Two days after Troy's birth, he was placed in a kinship placement with his great aunt. DSS did not obtain non-secure custody of the child because of this placement. At first, respondent made no attempt to visit with Troy and only called the great aunt sporadically to ask about the child. By the time of the first review hearing in November 2007, respondent had not visited

Troy or provided any financial support for him. DSS was concerned that respondent was not bonding with the child.

In a judgment entered 7 November 2007, Troy, who was nine weeks old, was adjudicated to be a neglected child. The court found that Troy was receiving adequate care in a safe home with the great aunt and adopted the recommendation of DSS and the guardian ad litem that the child remain in kinship placement. Temporary custody was granted to the great aunt. The court concluded, however, that the permanent plan for Troy should be reunification with his parents. The court entered an amended adjudication judgment and disposition judgment on 13 December 2007 that reflected the same material findings and conclusions. On 25 January 2008, the trial court entered an order for nonsecure custody granting custody to DSS, but authorizing placement with the great aunt.

By the June 2008 permanency planning and review hearing, respondent had not seen Troy since 27 April 2008. Respondent had also discontinued all of the medications prescribed to her for her paranoid schizophrenia. She indicated that she was willing for the great aunt to adopt Troy. Following that hearing, the trial court relieved DSS of reunification efforts and changed Troy's permanent plan to adoption.

DSS filed a petition to terminate respondent's parental rights on 26 August 2008. The trial court conducted a hearing on the petition on 13 January 2009 and entered a judgment on 16 March 2009. After making numerous findings of fact regarding the

procedural history of the case, respondent's involvement with DSS, and the evidence presented at the hearing, the trial court made the following finding of fact:

After hearing all evidence the court finds by clear, cogent and convincing evidence that the respondent mother had given birth to the minor child on [the birth date]. The respondent mother has a history of domestic violence incidents and presented to the hospital on May 30, 2007 with injuries to her abdomen resulting from a domestic violence incident. The respondent mother has been treated at the hospital numerous times for injuries resulting from [sic] assaults and for treatment for depression with paranoid psychosis. The respondent mother had lost custody of four other children. At the court hearing of June 25, 2008 the court relieved the Department of reasonable efforts with the respondent parents due to the respondent mother's mental health issues and her inconsistency with treatment. The respondent putative father did not participate in the reunification process at all and his whereabouts were unknown. The plan was changed to adoption at that date. During the time the minor child [was] in kinship placement the respondent mother provided \$40.00 for the minor child, a bag of diapers and a bag of diaper wipes. The respondent mother went in and out of treatment during the time she was involved with RHA. On June 24, 2008 the respondent mother requested not to be involved with her treatment provider any longer. The respondent mother's reason to leave the [sic] RHA is consistent with paranoia. The goals of RHA to have the respondent mother take her medications, understand her diagnosis and understand what triggers her behaviors was [sic] only partially successful. The respondent mother did not regularly take her medications during her involvement with RHA. . . .

Based on its findings of fact, the trial court concluded that grounds existed to terminate respondent's rights under N.C. Gen. Stat. § 7B-1111(a)(1) in that respondent had neglected Troy and

there would be a high likelihood of a repetition of neglect if the child were returned to the care of respondent. The court further concluded that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(2) – respondent had willfully left Troy outside the home for more than 12 months without showing that reasonable progress under the circumstances had been made in correcting the conditions that had led to the removal of the child from respondent's custody. After also finding grounds to terminate the putative father's parental rights and concluding that termination of parental rights was in the child's best interests, the court ordered that the parents' rights be terminated "and for the minor child to be released for adoption." Respondent timely appealed.²

Discussion

Respondent's sole argument on appeal is that the trial court abused its discretion by terminating her parental rights instead of placing Troy in guardianship with his great aunt. "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Shermer*, 156 N.C. App. 281, 285, 576 S.E.2d 403, 407 (2003). An abuse of discretion occurs when a decision is "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

N.C. Gen. Stat. § 7B-1110(a) (2007) provides: "After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the

²The putative father is not a party to this appeal.

parent's rights is in the juvenile's best interest." In making this determination, the trial court is required to consider (1) the age of the child; (2) the likelihood of adoption of the child; (3) whether the termination of parental rights will aid in the accomplishment of the child's permanent plan; (4) the bond between the child and the parent; (5) the quality of the relationship between the child and the proposed placement; and (6) any other relevant consideration. *Id.*

Respondent does not dispute that the trial court made findings regarding each of the factors set out in N.C. Gen. Stat. § 7B-1110(a). The court found that Troy was 14 months old³ at the time of the hearing; Troy's great aunt intends to adopt him as soon as he has been cleared for adoption; terminating respondent's parental rights is a necessary step toward achieving Troy's permanent plan of adoption; Troy and respondent have no bond; Troy has bonded very well with his great aunt, who is the only mother he has known; and Troy is thriving in the kinship placement.

Respondent, however, argues on appeal, as her trial counsel did, that Troy's best interests would be better served by guardianship than by termination of parental rights. She asserts: "It is relevant that her other children had all been placed in guardianship arrangements with family members. By not finding it relevant that this child should be treated the same as

³The trial court's order states that Troy was 14 months old at the time of the termination of parental rights hearing. Troy, however, was actually 17 months old as of the hearing. This error does not appear to materially impact the decision and, in any event, was not raised by respondent.

[respondent's] other children, the trial court abused its discretion in terminating the parental rights of [respondent]." Respondent does not, however, explain in what way relative guardianship would be better than an adoptive home for *this child*. Even though guardianship may have been the best disposition for the four other children, that does not require the conclusion that it is in the best interests of this child, given the child's particular circumstances. The children need not all be treated the same if their best interests differ.

On this issue, the trial court found: "The respondent mother's other children are in guardianship with family members. The respondent mother has not seen the minor child since the Christmas holidays, nor has she called [the great aunt] since then. There is no bond between the respondent mother and the minor child." In previous findings of fact, the trial court pointed to the sporadic visitation between the mother and Troy. On the other hand, the court found that "[t]he minor child has bonded well with [the great aunt] and she is the only mother he knows."

We cannot conclude that the trial court was unreasonable in determining that Troy's best interests would be served by taking the steps necessary for "the only mother [Troy] knows" to adopt Troy and become his actual mother – especially given that no bond exists with his biological mother and, in any event, the court had found that the great aunt "will allow visitation with the respondent mother and the minor child and that they will know each other as the minor child grows." Under these circumstances, we

hold that the trial court did not abuse its discretion in terminating respondent's parental rights. We, therefore, affirm.

Affirmed.

Judges HUNTER, JR. and BEASLEY concur.

Report per Rule 30(e).