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NO. COA10-228

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

IN THE MATTER OF:

M.G.S.

Yadkin County  
No. 08 J 29

Appeal by Respondent from order entered 23 November 2009 by Judge Mitchell L. McLean in District Court, Yadkin County. Heard in the Court of Appeals 16 August 2010.

*James N. Freeman, Jr. for Yadkin County Department of Social Services, Petitioner-Appellee.*

*Pamela Newell for Guardian ad Litem.*

*Betsy J. Wolfenden for Respondent-Appellant Mother on brief.*

*Annick Lenoir-Peek, substituted after briefing, as counsel of record for Respondent-Appellant Mother.*

McGEE, Judge.

Respondent-Appellant Mother (Respondent) appeals from the trial court's order terminating her parental rights as to the minor child M.G.S.<sup>1</sup> The sole argument Respondent raises on appeal is that the trial court, without first making any findings of fact regarding the statutory factors contained in N.C. Gen. Stat. § 7B-1110, abused its discretion in determining that termination of Respondent's parental rights was in the best interests of M.G.S.

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<sup>1</sup> The order also terminated the parental rights of the minor child's father, who is not a party to this appeal.

We affirm the order of the trial court.

M.G.S. was born in 1999, at which time both M.G.S. and Respondent tested positive for benzodiazepines, opiates, and marijuana. Wilkes County Department of Social Services became involved due to M.G.S.'s condition and placed M.G.S. with his great-aunt. M.G.S. remained with his aunt for several years, until the aunt's health deteriorated to the point where she could no longer care for him. M.G.S. was then returned to Respondent's care. Respondent was granted custody of M.G.S. in 2007.

Respondent was arrested on several drug-related charges on 16 April 2008. Drug paraphernalia and an illegal white substance were also discovered at Respondent's home, and Yadkin County Department of Social Services (DSS) became involved. M.G.S. was able to demonstrate to DSS how Respondent and others would use a needle to inject drugs into their arms, as well as how to heat a substance in the bowl of a spoon by holding a lighter under it. Respondent had no alternative plan of care for M.G.S., and DSS took temporary custody of M.G.S. DSS filed a juvenile petition alleging neglect and dependency and was granted non-secure custody. M.G.S. was placed in a foster home. A hearing was held on 12 June 2008 and M.G.S. was adjudicated neglected and dependent. Respondent was incarcerated at the time of that hearing and remained incarcerated until 15 January 2009.

A review hearing was held on 5 March 2009. At this hearing, it was determined that Respondent had been incarcerated for several months and had been unable to fully address certain aspects of her

case plan. The trial court approved DSS's suggestion to allow Respondent an additional ninety days to comply with her case plan.

A permanency planning review hearing was held on 28 April 2009. At this hearing, the trial court stated that the permanent plan for M.G.S. was reunification with Respondent. Another permanency planning hearing was held on 4 June 2009. At this hearing, the trial court found that Respondent had failed to comply with many of the requirements of her case plan in that Respondent had failed to: pay child support, maintain stable housing and employment, attend required classes, and remain drug-free. The trial court therefore changed the permanent plan from reunification to adoption, and ordered DSS to move forward with termination of Respondent's parental rights.

DSS filed a motion to terminate Respondent's parental rights on 7 July 2009. DSS alleged the following grounds for termination: (1) neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); and (2) wilfully leaving M.G.S. in foster care for more than twelve months without making reasonable progress to correct the conditions which led to the removal of M.G.S. from Respondent's home pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). Respondent filed a response denying the material allegations of the motion.

A termination hearing was held on 29 September 2009 and on 6 November 2009. After the adjudication phase of the hearing, the trial court determined that DSS had presented clear, cogent and convincing evidence to establish both grounds for termination as alleged in DSS's motion to terminate Respondent's parental rights.

After the disposition phase of the hearing, the trial court determined that termination of Respondent's parental rights was in the best interests of M.G.S. and ordered that Respondent's parental rights be terminated. Respondent appeals.

Respondent argues on appeal that the trial court failed to make sufficient findings of fact to support its conclusion that terminating Respondent's parental rights was in the best interests of M.G.S. Respondent argues the trial court should have made findings of fact addressing each factor listed in N.C. Gen. Stat. § 7B-1110(a).

Once grounds for termination have been found pursuant to N.C. Gen. Stat. § 7B-1111 (2009), the trial court must determine whether "terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110 (2009). We review a trial court's determination regarding best interests for an abuse of discretion. *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) (citation and quotation marks omitted).

The trial court's determination of the child's best interests is governed by N.C.G.S. § 7B-1110:

(a) After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. In making this determination, the 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. Gen. Stat. § 7B-1110(a).

At the close of the disposition phase of the hearing, the trial court stated, "in consideration of the -- factors listed in North Carolina 7B-1110 I find that the best interest of the juvenile is that the mother and the father's parental rights be terminated." In its written order, the trial court stated in the conclusions of law section addressing the determination of the best interests of M.G.S. that:

4. After considering the factors in N.C.G.S. 7B-1110, it is in the best interest of [M.G.S.] that the parental rights of the respondent father, [], and [Respondent], be terminated.

5. The adoption of [M.G.S.] is very likely.

N.C.G.S. § 7B-1110(a) mandates that the court "shall consider" the enumerated factors. The trial court in this case stated that it did so. It is always the better practice for the trial court to make specific findings of fact regarding the N.C.G.S. § 7B-1110 factors; however, the statute does not expressly require specific findings of fact as to each factor, but instead requires that the

trial court "consider" the factors. *See In re N.R., S.R.*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (2010).

The trial court noted the age of M.G.S. and specifically found that "adoption of [M.G.S.] is very likely." N.C.G.S. § 7B-1110 (a)(1) and (2). The third factor, "[w]hether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile," also flows from a finding that adoption was likely. Additionally, the trial court then specifically ordered that "DSS shall proceed with the adoption of [M.G.S.] and has the authority to consent to adoption." As to the fourth factor requiring the trial court to consider the bond between M.G.S. and Respondent, *see* N.C.G.S. § 7B-1110(4), the trial court found that Respondent was incarcerated when M.G.S. was taken into non-secure custody and that, during Respondent's incarceration, she sent only two letters to M.G.S. The trial court further found that once Respondent was released from incarceration, she had no visits with M.G.S. because she had not submitted to or produced a clean drug screen. Although the trial court's findings as to Respondent's bond with M.G.S. could have been more extensive, those findings demonstrate the trial court considered the fourth factor. *See In re S.C.H.*, \_\_\_ N.C. App. \_\_\_, 682 S.E.2d 469 (2009) (holding that the trial court's order was sufficient even without specific finding on bond between child and parent when trial court made findings relating to contact between child and parent), *aff'd per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010).

In making its determinations as to N.C.G.S. § 7B-1110(5), the

trial court considered the testimony of M.G.S.'s foster mother regarding M.G.S.'s health, progress in school, the bond between the foster family and M.G.S., the expressed wish of M.G.S. to be adopted, and the foster parents' desire to adopt M.G.S. Further, the guardian *ad litem* and social worker also testified to the bond between M.G.S. and his foster family - testimony that was not challenged by Respondent on appeal. Although the trial court's stated findings do not relate to this factor, the trial court did state it had "considered" this factor in entering its order.

We do not determine that the trial court's actions in this case are "manifestly unsupported by reason." See *Barnes*, 165 N.C. App. at 580, 599 S.E.2d at 589. A trial court should make specific findings of fact indicating its consideration of the factors in N.C.G.S. § 7B-1110 and demonstrating its reasoning, which would aid appropriate appellate review. However, in the case before us we do not find that the trial court abused its discretion in determining that termination of Respondent's parental rights was in the best interests of M.G.S.

Affirmed.

Judges BRYANT and GEER concur.

Report per Rule 30(e).