

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA10-319

NORTH CAROLINA COURT OF APPEALS

Filed: 3 August 2010

IN THE MATTER OF:

E.A.B.

Cleveland County  
No. 08 JT 0203

Appeal by Respondent-Mother from order entered 4 January 2010 by Judge Larry J. Wilson in District Court, Cleveland County. Heard in the Court of Appeals 5 July 2010.

*Charles E. Wilson, Jr. for Cleveland County Department of Social Services, petitioner-appellee.*

*Pamela Newell for guardian ad litem-appellee.*

*Mary McCullers Reece for respondent-appellant.*

WYNN, Judge.

N.C. Gen. Stat. § 7B-1110 lists factors that the trial court must consider before determining that it is in the best interests of a juvenile to terminate a parent's parental rights. In the present case, because the trial court gave consideration to and made findings regarding each of these factors before terminating Respondent-mother's parental rights, we affirm the trial court's order.

Respondent has eight children. Three of Respondent's children were removed from her custody after she left them at a homeless shelter. A fourth child was placed in the custody of Cleveland

County Department of Social Services ("DSS") after testing positive for cocaine at birth. On 12 July 2006, Respondent's parental rights to these four children were involuntarily terminated. Respondent had another child who was placed in the custody of DSS in July 2007, and was subsequently adjudicated neglected. Respondent testified that she has two other children who live with their fathers. The subject of the present action, E.A.B., was born in 2008.

At the time of E.A.B.'s birth, Respondent was incarcerated at Women's Central Prison awaiting trial on charges of felony common law robbery, felony conspiracy, and misdemeanor larceny. On 7 July 2009, Respondent was convicted of the charges against her and sentenced to active time. E.A.B. has been in the physical and legal custody of DSS since his birth.

On 14 January 2009, E.A.B. was adjudicated to be a neglected juvenile based upon the stipulation of Respondent and a finding that Respondent had a history of neglecting her other children. By order entered 21 January 2009, the trial court continued custody of E.A.B. with DSS, ordered DSS to provide for his placement and care, and relieved DSS of any obligation to make further efforts to return the juvenile to the home.

On 11 May 2009, DSS filed a petition to terminate Respondent's parental rights. DSS alleged as grounds: (1) neglect; (2) willful failure to pay cost of care; (3) willful abandonment; and (4) prior involuntarily termination of parental rights. A hearing was held on 16 December 2009. By order entered 4 January 2010, the trial

court terminated Respondent's parental rights to E.A.B.

On appeal to this Court, Respondent's sole argument is that the trial court abused its discretion in concluding that it was in E.A.B.'s best interests to terminate Respondent's parental rights.

Once the trial court has determined that a ground for termination exists, the court moves to the disposition stage of the proceeding when it must determine whether termination is in the best interest of the child. N.C. Gen. Stat. § 7B-1110(a) (2009). N.C. Gen. Stat. § 7B-1110 lists factors that must be considered by the trial court in making this determination. *See id.* "We review the trial court's decision to terminate parental rights for 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." *In re R.B.B.*, 187 N.C. App. 639, 648, 654 S.E.2d 514, 521 (2007), *disc. review denied*, 362 N.C. 235, 659 S.E.2d 738 (2008).

Respondent concedes that the trial court gave consideration to and made findings regarding each of the factors enumerated in N.C. Gen. Stat. § 7B-1110(a). Respondent contends, however, that the trial court abused its discretion in concluding that termination was in E.A.B.'s best interests because it did not consider how E.A.B. might have benefitted from knowing his biological mother. Respondent cites *In re Nesbitt*, 147 N.C. App. 349, 360-61, 555 S.E.2d 659, 667 (2001), for the proposition that "[t]he decision of whether to terminate parental rights should not be relegated to a choice between the natural parent and the foster family."

In *Nesbitt*, the respondent's parental rights were terminated upon the ground that the respondent had willfully left the juvenile in foster care for more than twelve months without making reasonable progress toward correcting the conditions that led to the juvenile's placement in foster care. *Id.* at 351, 555 S.E.2d at 661. The Court expressed concern at the numerous findings made by the trial court regarding the foster parents, and reiterated that the trial court must first consider a respondent's fitness to parent the child. *Id.* at 360-61, 555 S.E.2d at 667. "[O]nly if [respondent] is found to be either unwilling or unable to parent her child should the foster home then be considered under the best interests standard." *Id.* at 361, 555 S.E.2d at 667.

It is clear from this context that *Nesbitt* did not purport to add other considerations to the statutory factors listed in N.C. Gen. Stat. § 7B-1110(a). Indeed, we expressly "d[id] not reach review of the [trial] court's conclusion that it was in the best interest of the child to terminate Ms. Nesbitt's parental rights." *Id.* Thus, *Nesbitt* does not support Respondent's argument.

Respondent acknowledges that the trial court considered the proper factors and made relevant findings. Since the trial court properly considered the statutory factors, and came to a decision based on its findings, the trial court did not abuse its discretion in terminating Respondent's parental rights. Accordingly, we affirm the order of the trial court.

Affirmed.

Judges ELMORE and HUNTER, JR., concur.

Report per Rule 30(e).