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NO. COA10-733

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

IN THE MATTER OF:
Z.A.E.P. & J.L.P.

Rockingham County
Nos. 07 JT 150-51

Appeal by respondent-mother from order entered 8 April 2010 by Judge James A. Grogan in Rockingham County District Court. Heard in the Court of Appeals 18 October 2010.

No brief filed by Rockingham County Department of Social Services petitioner-appellee.

Peter Wood for respondent-mother appellant.

Parker Poe Adams & Bernstein LLP, by Charles E. Raynal, IV, and Matthew M. Wolfe, for Guardian Ad Litem.

HUNTER, JR., Robert N., Judge.

Respondent-mother appeals from an order terminating her parental rights to Z.A.E.P. and J.L.P. We affirm.

I. Factual and Procedural Background

On 26 October 2007, the Rockingham County Department of Social Services ("DSS") filed a petition alleging that Z.A.E.P. and J.L.P., as well as a sibling, C.P., were neglected juveniles. DSS stated that it had been offering services to respondent-mother's family since 2003 "due to a chronic history of improper supervision of the children, unstable housing, and unsanitary living

conditions." Then, in July 2007, DSS received a report regarding further improper supervision of the juveniles. Additionally, during the same period of time, the family was evicted from their home because of its "filthy" condition. The family moved to a new residence in August 2007, and DSS reported that the "home is now filthy also." DSS alleged that there were several safety hazards in the home, including glass on the floor, and a screwdriver, scissors, and a bottle of bleach within reach of the children. Moreover, during one visit by DSS, Z.A.E.P. was found to be carrying around a box cutter. In addition to the unsanitary and hazardous conditions of the home, DSS reported issues with respondent-mother's lack of employment and the juveniles' poor attendance at school.

On 15 April 2008, Z.A.E.P. and J.L.P. were adjudicated neglected juveniles. The petition was dismissed as to C.P. At disposition, DSS was granted custody of Z.A.E.P. and J.L.P. and the two juveniles were placed in separate foster homes. Respondent-mother was granted supervised visitation. The court ordered that the permanent plan for the juveniles be reunification.

Following the adjudication of neglect, respondent-mother initially made "significant progress" towards correcting the issues that led to the filing of the petition, and eventually respondent-mother was granted overnight visitation. Later, a trial home placement was placed under consideration. However, respondent-mother's progress later halted, and at a review hearing on 13 August 2009, the trial court changed the permanent plan for the

juveniles to adoption. The court found that inadequate supervision of the children during visits continued to be a problem. Specifically, the court cited a burn injury to Z.A.E.P.'s hand as an example of the risk of injury to the children due to respondent-mother's improper supervision. Additionally, the court found that respondent-mother exhibited "instability regarding her ability to provide for her needs and her children's needs." There were also concerns about drug use in respondent-mother's household. Finally, respondent-mother had violated court orders by allowing other adults to be present during overnight visitation with the juveniles. Accordingly, the court concluded that "the best plan of care . . . is adoption and visits should become supervised."

On 24 August 2009, DSS filed a petition to terminate respondent-mother's parental rights. DSS alleged three grounds for termination: (1) that respondent-mother had neglected the juveniles within the meaning of N.C. Gen. Stat. § 7B-101(15) (2009), pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2009); (2) that respondent-mother had willfully left the juveniles in foster care for more than twelve months without showing that reasonable progress under the circumstances had been made in correcting those conditions that led to the juveniles' removal, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); and (3) that respondent-mother, for a continuous period of six months immediately preceding the filing of the petition, had willfully failed to pay a reasonable portion of the cost of care for the juveniles although physically and financially able to do so, pursuant to N.C. Gen. Stat. § 7B-1111(a)(3).

Hearings were held on the petition to terminate respondent-mother's parental rights on 18 February 2010 and 4 March 2010. The trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (3) to terminate respondent-mother's parental rights. The court further concluded that it was in the juveniles' best interests that respondent-mother's parental rights be terminated. Accordingly, on 8 April 2010, the trial court terminated respondent-mother's parental rights. Respondent-mother appeals. After careful review of the record, briefs, and contentions of the parties, we affirm.

II. Analysis

In termination of parental rights proceedings, the trial court conducts two phases: an adjudicatory phase and a dispositional phase. *In re Nesbitt*, 147 N.C. App. 349, 351, 555 S.E.2d 659, 661 (2001). During the adjudication phase, the proponent of termination must "demonstrate by clear, cogent and convincing evidence" that there are statutory grounds for termination, as defined by N.C. Gen. Stat. § 7B-1111(a). *In re Nesbitt*, 147 N.C. App. at 351-52, 555 S.E.2d at 661-62. Once the trial court determines one or more of the statutory grounds exist for termination, the trial court then moves on to the dispositional phase. *Id.* at 352, 555 S.E.2d at 662. During the dispositional phase, the trial court must consider whether termination would be in the juvenile's best interest. *Id.* "The trial court has discretion, if it finds that at least one of the statutory grounds exists, to terminate parental rights upon a finding that it would be in the child's best

interests." *Id.*

On appeal, we determine whether the trial court's conclusion that statutory grounds for terminating parental rights exist (the adjudication phase) is supported by "clear, cogent, and convincing evidence." *Id.* at 351, 555 S.E.2d at 661. We review the trial court's ultimate decision to terminate parental rights (the dispositional phase) for abuse of discretion. *Id.* at 352, 555 S.E.2d at 662. Respondent-mother does not allege that the trial court's conclusion—that statutory grounds existed to terminate her parental rights—was not supported by clear, cogent, and convincing evidence. Respondent-mother's sole argument on appeal is that the trial court abused its discretion when it determined it was in the best interests of the juveniles to terminate her parental rights.

In determining whether termination of parental rights would be in the juvenile's best interest, the trial court considers the following six factors: (1) the age of the juvenile; (2) the likelihood of adoption; (3) the impact on the accomplishment of the permanent plan; (4) the bond between the juvenile and the parent; (5) the relationship between the juvenile and a proposed adoptive parent or other permanent placement; and (6) any other relevant consideration. N.C. Gen. Stat. § 7B-1110(a) (2009). The court is to take action "which is in the best interests of the juvenile" when "the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100(3) (2009). The trial court's disposition order will not be disturbed unless it "is so arbitrary that it could not have been

the result of a reasoned decision.'" *In re J.B.*, 172 N.C. App. 747, 751, 616 S.E.2d 385, 387 (quoting *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)), *aff'd per curiam*, 360 N.C. 165, 622 S.E.2d 495 (2005).

In the instant case, the trial court expressly stated in its order that it had considered those factors set forth in N.C. Gen. Stat. § 7B-1110(a). The trial court made the following finding of fact:

54. As to the factors in N.C.G.S. § 7B-1110(a), both children are of a young age and the termination of parental rights would aid in the accomplishment of the children's permanency plans of adoption. The likelihood of adoption is very high for [Z.A.E.P.] and good (although not quite as high) for [J.L.P.]. There is a good parental bond or relationship between [respondent-mother] and [Z.A.E.P.], and a very strong bond with [J.L.P.]. There is a very strong bond between [Z.A.E.P.] and her proposed adoptive parents. There is no proposed adoptive parent for [J.L.P.] at this time, but the opportunity for adoption for him is better now than it would be later. Additionally, the likelihood of a return to foster care for both children, should they be returned to any parent, is extremely high given the history of this case.

Respondent-mother challenges the trial court's dispositional findings and argues that the court should not have terminated her parental rights to J.L.P.

She first contends that termination would not aid the permanent plan of adoption because the likelihood of J.L.P. being adopted is "almost [z]ero." Respondent-mother claims that J.L.P. does not want to be adopted, and he has "tremendous behavioral problems" that only she can handle. Respondent-mother thus asserts that J.L.P. is "not the sort of child that prospective adoptive

parents want." We are not persuaded.

At the dispositional hearing, Jody Delancey, the guardian ad litem, testified that although J.L.P. had prior behavioral issues, the fact that he had "been in the same home for two years without having to be moved around . . . makes him more likely for adoption." Delancey's testimony was in accord with the testimony of Jan Odom, the DSS social worker who worked with respondent-mother and her family. Odom testified that J.L.P. is "a sweet child. He's very loving. On his medications, his behaviors are very controllable . . . [and] the fact that [J.L.P.'s] been in one placement since the time that he has been in foster care is very helpful in finding a placement for him."

Respondent-mother further claims that J.L.P.'s age weighs against termination, because "[o]lder children are harder to adopt." However, Delancey testified that J.L.P., who was eight at the time of the termination hearing, was "probably at the optimal age for adoption." Delancey further testified that "[a] few years from now [J.L.P.] will not be [as adoptable]." Accordingly, based on the testimony from Delancey and Odom, the court could properly find that J.L.P.'s prospects for adoption were "good," and "the opportunity for adoption for him is better now than it would be later." The court could further conclude that, when considering J.L.P.'s age, termination of respondent-mother's parental rights would aid in the accomplishment of the permanent plan of adoption. Respondent-mother argues, based upon *Brooks v. Brooks*, 12 N.C. App. 626, 184 S.E.2d 417 (1971), that J.L.P. is old enough to make

reasoned decisions, and therefore, the court should take into account his desire to live with respondent-mother. This argument fails for two reasons. First, *Brooks* is not applicable because it deals with a determination of custody under N.C. Gen. Stat. § 50-13.2, not termination of parental rights. Secondly, even in a child custody case, the child's wishes "are never controlling" and "the court must yield in all cases to what it considers to be the child's best interests, regardless of the child's personal preference.'" *Reynolds v. Reynolds*, 109 N.C. App. 110, 112-13, 426 S.E.2d 102, 104 (1993) (quoting *Clark v. Clark*, 294 N.C. 554, 577, 243 S.E.2d 129, 142 (1978)).

Respondent-mother also cites the strong bond between her and J.L.P. and argues that termination is not in J.L.P.'s best interest. We disagree. Although the trial court found that respondent-mother and J.L.P. shared a very strong bond, this factor alone is not dispositive. Delancey testified that respondent-mother was not presently capable of parenting J.L.P. Moreover, Delancey testified that "based on the pattern that [respondent-mother] has shown over the past eight years of [J.L.P.'s] life[,] she did not believe that respondent-mother would ever be able to parent J.L.P. This testimony, as well as the trial court's finding at adjudication that there was likely to be a repetition of neglect should J.L.P. be returned to respondent-mother's care, supports its dispositional finding that the likelihood of a return to foster care for J.L.P. was "extremely high" if he were to return to respondent-mother's care. The trial court thus concluded that

J.L.P.'s interests would be best served by terminating respondent-mother's parental rights. Based on the findings of fact made by the trial court after an extensive termination hearing, we discern no abuse of discretion.

We lastly note that respondent-mother does not argue on appeal that the court abused its discretion by terminating her parental rights to Z.A.E.P. Respondent-mother's arguments solely pertain to J.L.P. Consequently, respondent-mother has waived any challenge to the trial court's determination that her parental rights to Z.A.E.P. should be terminated. See N.C.R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."). Accordingly, we affirm the trial court's order terminating respondent-mother's parental rights.

Affirmed.

Judges HUNTER, Robert C., and STROUD concur.

Report per Rule 30(e).