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NO. COA13-506

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

IN THE MATTER OF:

R.N.H. and O.R.H.,  
Minor Children

Yadkin County  
Nos. 11 JT 53, 54

Appeal by respondent father from order entered 7 February 2013 by Judge David V. Byrd in Yadkin County District Court. Heard in the Court of Appeals 17 September 2013.

*James N. Freeman, Jr., for petitioner-appellee Yadkin County Department of Social Services.*

*Michael E. Casterline for respondent-appellant father.*

*Louise M. Paglen for guardian ad litem.*

BRYANT, Judge.

Where the trial court's findings of fact were supported by clear, cogent and convincing evidence supporting the termination of a respondent father's parental rights, we will not disturb those findings on appeal.

On 11 May 2011, petitioner Yadkin County Department of Social Services ("DSS") received a Child Protective Services Report on "Rand" and "Olivia"<sup>1</sup> alleging improper care, supervision and an injurious environment caused by substance abuse. A family assessment found that the children, who were living with their mother, were neglected, did not have a stable home, were exposed to drugs, and were being left with strangers. DSS initiated a safety plan for the mother and children. The mother agreed to maintain contact with DSS while DSS instituted services for her and the children but failed to do so.

After failing to maintain contact with DSS, a search for the mother and children was conducted from 23 May 2011 until 9 June 2011 when the Elkin police located them. The mother admitted that during this time period she was assaulted and that the children were subjected to the presence of persons using drugs. In June 2011, DNA testing determined that respondent was the father of Rand but not of Olivia. Both the mother and respondent were served with probation violation papers during this time. In early July, the mother's probation was revoked, and she was sentenced to 78 days imprisonment. DSS filed for a

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<sup>1</sup> Rand and Olivia are pseudonyms used to protect the identities of the juveniles pursuant to N.C.R. App. P. 3.1(b).

petition for non-secure custody of Rand and Olivia on 14 July 2011.

On 8 September 2011, Rand and Olivia were adjudicated neglected juveniles and Olivia was also adjudicated dependent because her mother was currently incarcerated and her father was not identified. Olivia was moved into foster care, while Rand lived with his grandmother, respondent's mother. After the adjudication, the mother and respondent entered into separate Out-of-Home Family Services Agreements ("OHFSA") with the goal of reunification with the children. The OHFSA required both parents to obtain substance abuse and mental health assessments, complete parenting classes, have clean drug and alcohol screens, obtain employment, and maintain secure housing. The OHFSA acknowledged that respondent was residing with his mother, who was also caring for Rand during this time. The trial court ordered the grandmother to "make the needs of the minor child, [Rand], her number one priority as opposed to making the needs of her son, [Rand's father], the primary focus of her life."

On 28 September 2011, DSS conducted a home visit with the grandmother and reminded her that she needed to ensure that Rand's visits with respondent were supervised according to DSS regulations. DSS also reminded the grandmother that Rand's

mother, who had recently been released from jail, could not visit Rand without DSS approval. The grandmother acknowledged both conditions. Upon leaving the residence, DSS learned that respondent and the mother had been seen with Rand without the grandmother's supervision. The grandmother denied that Rand had been left unsupervised with either of his parents, and again acknowledged that she needed to comply with DSS regarding parental visits to Rand.

On 29 November 2011, DSS received another report that both Rand's mother and respondent had been seen unsupervised with their son. The grandmother admitted to DSS that she had permitted Rand to have unsupervised contact with respondent. Citing the grandmother's violation of the court order, DSS placed Rand in a licensed foster home on 30 November 2011.

At a review hearing on 1 December 2011, the trial court determined that although the grandmother had taken good care of Rand, the grandmother had violated the earlier court order at least twice. The trial court also found that the mother and respondent had resumed living together and had failed to take a drug and alcohol screen on 18 November 2011. The trial court made a further finding that no suitable relative had been found with whom the minor children could be safely placed.

On 12 and 23 July 2012, a permanency planning hearing was held. The trial court found that neither respondent nor the mother had completed the recommendations of the OHFSA. In particular, respondent had not attended weekly counseling sessions, did not comply with five drug and alcohol screen requests, tested positive for alcohol on 4 May 2012, did not obtain a domestic violence assessment, did not complete parenting classes, visited Rand thirteen out of a possible twenty-two times, and was in arrears on child support for \$495.56.

The trial court also found that on 14 March 2012, a domestic violence and assault report was filed regarding the mother and respondent. The mother was found with a convicted sex offender, had a bloody lip and elbow, and appeared to be intoxicated. When approached, respondent smelled of alcohol and denied the mother's allegations of assault. Later that same night, police were called to the residence and found the mother arguing with respondent. Noting that the children had been in DSS custody for over twelve months, the trial court changed the permanent plan from reunification to adoption, ceased reunification efforts and authorized DSS to pursue TPR.

On August 7 2012, DSS filed a motion to terminate parental rights regarding Rand and Olivia. For Rand, the motion sought to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)-(2) (2011). Respondent filed a response and a motion to dismiss.

On 10 January 2013, the trial court held a permanency planning hearing. The court found that neither parent had contacted DSS to request a visit with Rand since the previous court hearing on 12 July 2012. The court also found that no suitable relative had been located for the placement of Rand and Olivia, and confirmed that adoption would be the permanent plan for the children.

The motion to terminate parental rights was heard on 31 January 2013. The trial court made findings of fact that respondent failed to complete eight items on his OHFSA. The court also found that the grandmother lost custody of Rand because she had violated a court order by permitting Rand to have unsupervised contact with his parents. Citing the best interests of the children, the trial court terminated the parental rights of both the mother and respondent in accordance with N.C.G.S. § 7B-1111(a)(1).

Respondent now appeals.<sup>2</sup>

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On appeal, respondent argues that the trial court erred in terminating his parental rights. We disagree.

Termination of parental rights proceedings are conducted in two phases: adjudication and disposition. During adjudication, the petitioner has the burden of proof to demonstrate by clear, cogent and convincing evidence that one or more of the statutory grounds for termination exist. The standard of appellate review of the trial court's conclusion that grounds exist for termination of parental rights is whether the trial judge's findings of fact are supported by clear, cogent, and convincing evidence, and whether these findings support its conclusions of law.

*In re Nesbitt*, 147 N.C. App. 349, 351-52, 555 S.E.2d 659, 661-62 (2001) (citations omitted).

Respondent contends that the trial court erred in terminating his parental rights because the court failed, under the best interests of the child provision of N.C. Gen. Stat. § 7B-1110(a) (2011), to consider Rand's bond with his grandmother. N.C.G.S. § 7B-1110(a) requires that

[a]fter 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

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<sup>2</sup> The mother did not appeal the termination of her parental rights regarding either Rand or Olivia.

juvenile's best interest. The court may consider any evidence . . . that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

- (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.

Here, in granting the motion to terminate respondent's parental rights, the trial court made specific findings as to Rand's placement with, and subsequent removal from, his grandmother's residence:

[i]n the beginning of this case and continuing throughout the pendency of this case, the paternal grandmother . . . offered herself as a placement for the minor child [Rand]. Her residence was approved for placement initially even though [respondent] . . . was living in his mother's residence. Despite the Court admonishing [her] in the



Adjudication and Disposition Order [] to, "make the needs of the minor child [] her number one priority as opposed to making the needs of her son [] the primary focus of her life," [she] permitted unsupervised contact between [respondent] and [Rand]; thus, [Rand] was removed from [her] residence and she was no longer considered for placement.

The court concluded that "[a]ttempts to place [Rand] with his paternal grandmother . . . were unsuccessful because of [her] inability to properly supervise the contact between [Rand] and his parents." As such, the trial court properly made findings of fact which supported the court's granting of the motion to terminate respondent's parental rights.

Respondent also argues that the trial court erred by not considering and making specific findings as to "[a]ny relevant consideration" under N.C. Gen. Stat. § 7B-1110(a)(6) (2011). Respondent specifically argues that N.C.G.S. § 7B-1110(a)(6) is subject to N.C. Gen. Stat. § 7B-506(h), which states that "[i]f the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile." N.C.G.S. § 7B-506(h) (2011).

Here, the trial court followed N.C.G.S. § 7B-506(h) by initially placing Rand with his paternal grandmother for care. However, the court made findings of fact, based on the reports of DSS and the Adjudication and Disposition Order, that the grandmother had violated the court order requiring Rand to have only supervised visitations with respondent. The court also considered other relatives of Rand for placement, but found that Rand had no relatives who could provide him with an appropriate home. As such, the trial court made appropriate findings of fact which supported termination of respondent's parental rights.

Respondent further contends that the trial court erred in failing to consider the strength of the bond between Rand and his paternal grandmother. Under N.C. Gen. Stat. § 7B-1110(a)(5), a trial court must make a determination as to "[t]he quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement." N.C.G.S. § 7B-1110(a)(5) (2011). However, this consideration is only one of six criteria that a trial court must consider and weigh in deciding whether to grant a motion to terminate parental rights.

Here, the trial court made a finding that the paternal grandmother was initially approved to care for Rand but lost that approval due to her failure to comply with the court order regarding supervised visitations. The trial court then determined that both Rand and Olivia "have a close bond with their respective foster parents." It was also determined that "[Rand] knows his parents, but identifies himself with his foster parent more strongly." The trial court did not find that Rand had a close relationship with his grandmother; instead, Rand was described as having "no attachment to either of his parents and loves [his foster parent] and her children. [Rand is] bonded with [his] foster famil[y]." As such, the trial court properly considered Rand's relationship with both his paternal grandmother and his foster family in determining whether the termination of respondent's parental rights would be in Rand's best interests. Accordingly, we find that the trial court did not err in determining that the termination of respondent's parental rights would be in the best interest of the minor child.

Affirmed.

Judges McGEE and STROUD concur.

Report per Rule 30(e).