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NO. COA13-806
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

IN THE MATTER OF:

D.P.W. Dare County
No. 08 JT 28

Appeal by respondent from order entered 21 March 2013 by Judge Amber Davis in Dare County District Court. Heard in the Court of Appeals 28 October 2013.

Sharp, Michael, Graham & Baker, L.L.P., by Steven D. Michael, for petitioner-appellee.

W. Michael Spivey for respondent-appellant.

Parker Poe Adams & Bernstein LLP, by A. Todd Sprinkle, for Guardian Ad Litem-appellee.

GEER, Judge.

Respondent father appeals from orders ceasing reunification efforts and terminating his parental rights to his son "Danny."¹ We hold that the evidence in the record supported the trial court's determination that reunification efforts would be futile and inconsistent with the child's health, safety, and need for a

¹The pseudonym "Danny" is used throughout this opinion to protect the identity of the minor child and for ease of reading.

safe, permanent home within a reasonable period of time. The trial court, therefore, did not abuse its discretion in ordering that reunification efforts be ceased. We also conclude that grounds existed to terminate respondent's parental rights and that the trial court did not abuse its discretion in terminating respondent's parental rights given the facts of this case.

Facts

Danny was born to respondent and his mother D.B. on 25 February 2007. Respondent and Danny's mother were never married and had an unstable relationship. In March 2008, the Dare County Department of Social Services ("DSS") filed a juvenile petition alleging that Danny was a neglected and dependent juvenile. By order filed 2 June 2008, the trial court adjudicated Danny neglected based upon respondent's and the mother's substance abuse issues and drug-related criminal activity. The trial court awarded legal custody of Danny to DSS and authorized placement of Danny with his maternal grandparents.

On 1 April 2010, the trial court entered a Chapter 50 custody order giving the mother custody of Danny and terminating its juvenile jurisdiction. The trial court found that the mother was successfully addressing her drug addiction and that Danny had bonded with the mother and her boyfriend, Mr. C. The

trial court found that respondent had sporadic involvement with Danny due to his frequent incarcerations and that respondent was unfit to have visitation with Danny.

On 7 June 2011, DSS filed a second juvenile petition alleging that Danny was a neglected juvenile. By order filed 10 November 2011, the trial court adjudicated Danny a neglected juvenile based upon the mother's relapse and arrest for possession of cocaine. The trial court temporarily placed Danny with Mr. C.

After holding a disposition hearing on 30 November 2011, the trial court entered a disposition order. The trial court found that the mother was living with her grandmother, that respondent was incarcerated pending trial on three felony charges, that respondent had not had contact with Danny since 2007, and that Mr. C. wished to remain a kinship placement for Danny. The trial court ceased reunification efforts between respondent and his son and denied respondent visitation. The trial court ordered that custody of Danny remain with DSS, authorized placement of Danny with Mr. C., and allowed the mother to have visitation with Danny.

The trial court held subsequent permanency planning hearings and ordered that the permanent plan for Danny be reunification with his mother. In a permanency planning order

filed 12 July 2012, the trial court ordered DSS to proceed with termination of respondent's parental rights due to respondent's incarceration and lack of a relationship with Danny.

DSS filed a petition to terminate respondent's parental rights on 30 August 2012. In an order filed 21 March 2013, the trial court concluded that grounds for termination of respondent's parental rights existed under N.C. Gen. Stat. § 7B-1111(a)(1) (2011) (neglect) and N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress). The trial court also concluded that it was in Danny's best interest to terminate respondent's parental rights. Respondent timely appealed to this Court from the order ceasing reunification efforts and the order terminating his parental rights.

I

Respondent first challenges the trial court's decision to cease reunification efforts. "This Court reviews an order that ceases reunification efforts to determine whether the trial court made appropriate findings, whether the findings are based upon credible evidence, whether the findings of fact support the trial court's conclusions, and whether the trial court abused its discretion with respect to disposition." *In re C.M.*, 183 N.C. App. 207, 213, 644 S.E.2d 588, 594 (2007).

N.C. Gen. Stat. § 7B-507(b)(1) (2011) provides that a trial court may order a cessation of reunification efforts "if the court makes written findings of fact that . . . [s]uch efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." Findings of fact supported by competent evidence are binding on appeal even if evidence has been presented contradicting those findings. *In re N.B., I.B., A.F.*, 195 N.C. App. 113, 116, 670 S.E.2d 923, 925 (2009). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

In its order, the trial court specifically found:

52. Reasonable efforts to reunite the child with his biological father should not be required and should cease as such efforts clearly would be futile and would be inconsistent with the juvenile's health, safety and need for a safe, permanent home within a reasonable period of time.

Respondent argues that this finding of fact is unsupported by the evidence. Based on our review of the evidence, the trial court's finding is supported by the DSS court report, the guardian ad litem's court report, and testimony from the DSS social worker, including reasonable inferences that may be drawn

from the evidence. Moreover, the finding is supported by the court's other unchallenged findings of fact.

The trial court found that respondent does not have a relationship with his son, that he has not shown any interest in establishing a relationship with his son, and that the last known contact respondent had with his son was in December 2007. The trial court found that respondent had a lengthy history of substance abuse and criminal activity and that respondent was currently incarcerated in the Dare County Detention Center. The trial court further found that on 1 December 2009 and 10 March 2010, respondent was found not to be a fit and proper person to have care, custody, and control of Danny. Additionally, the trial court found that Danny was "in need of a safe, stable home[,] free of any substance abuse or criminal activity" and that, at this time, respondent does not have the ability to provide appropriate care for him.

Respondent argues that the evidence does not support the finding of fact regarding reunification efforts because, at the time of the November 2011 disposition hearing, he was not serving an active prison sentence but awaiting trial on pending charges. Respondent argues that the trial court had no way of knowing the extent to which his incarceration would ultimately affect reunification efforts. He also argues that although he

has abused drugs in the past, the evidence did not show that he was currently abusing drugs. However, the evidence of respondent's history of criminal activity and that respondent was facing charges for several felonies supports a reasonable inference that his incarceration would be inconsistent with Danny's need for a stable home within a reasonable amount of time. As to his drug abuse, the trial court found that "[i]t is believed that [respondent and his current girlfriend] continue to abuse prescription drugs." Respondent's arguments simply question the weight and credibility of the evidence, decisions that lie solely within the purview of the trial judge.

Next, respondent argues the trial court abused its discretion by finding that reunification efforts should continue with Danny's mother but that they should cease with respondent. "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007) (quoting *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002)), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008). Respondent compares his circumstances with those of Danny's mother and questions how the trial court could reach different conclusions as to reunification efforts with each parent while also concluding

that neither parent had the ability to care for the child and that both had a history of substance abuse, had engaged in criminal activity, and were facing criminal charges.

The trial court, however, found that Danny has a close relationship with his mother and that he would benefit from ongoing supervised contact with his mother if she is sober and participating in treatment. It found that visits between Danny and his mother go well and that she has stressed her commitment to sobriety and building a solid future for herself and Danny. In contrast, the court found that respondent had never played a role in Danny's life and does not have a relationship with him. At the time of the order, respondent was incarcerated pending charges on three felonies, and he had been incarcerated sporadically throughout Danny's life. Given these circumstances, it was not an abuse of discretion to cease reunification efforts with respondent and continue efforts with the mother.

In sum, the trial court's findings support the determination that reunification efforts would be futile and contrary to Danny's health, safety, best interests, and need for a safe and permanent home within a reasonable period of time. Further, we hold that the trial court did not abuse its

discretion in ceasing reunification efforts and, therefore, affirm the permanency planning order.

II

Respondent next challenges the trial court's order terminating his parental rights. Termination of parental rights involves a two-stage process. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). At the adjudicatory stage, "the petitioner has the burden of establishing by clear and convincing evidence that at least one of the statutory grounds listed in N.C. Gen. Stat. § 7B-1111 exists." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002).

"If the trial court determines that grounds for termination exist, it proceeds to the dispositional stage, and must consider whether terminating parental rights is in the best interests of the child." *Id.* at 98, 564 S.E.2d at 602. The trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001).

Respondent concedes that at least one ground existed to terminate his parental rights and does not challenge the adjudication stage of the termination of parental rights proceedings. Respondent argues, however, that the trial court

abused its discretion in concluding that the termination of his parental rights was in Danny's best interest.

In determining whether terminating the parent's rights is in the juvenile's best interest, the court is required to consider the following criteria:

- (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) (2011). Here, the trial court made written findings addressing each of the factors contained in N.C. Gen. Stat. § 7B-1110(a).

The trial court found that Danny should remain in his current placement with Mr. C., with whom Danny shares a relationship that mirrors that of a father and son. There is no plan for adoption as the permanent plan for Danny is still reunification with his mother who plans to remain in a committed relationship with Mr. C. Further, the court found, Danny and

his mother have a close, loving relationship, and Danny is securely bonded to her, Mr. C., Mr. C.'s parents, and his great maternal grandmother.

With respect to respondent, the trial court found that Danny does not have a bond with him because respondent had not been a part of Danny's life for the past six years and is currently serving a five year 11 month sentence. Danny does not know respondent and never asks questions concerning his whereabouts. In addition, the trial court determined that "[t]ermination of parental rights will aid in the accomplishment of the permanent plan for [Danny] as it will allow for boundaries to be placed around any future contact with [respondent] and [Danny]."

Respondent argues, however, that the trial court abused its discretion in deciding that termination was in Danny's best interest since the permanent plan for Danny is reunification with the mother. Therefore, he reasons, termination is not necessary because no one is currently seeking to adopt Danny. Respondent argues that his parental rights are being terminated not because it is in the best interest of Danny, but to "pave the way" for Mr. C. to adopt Danny in the future should reunification efforts with Danny's mother fail. Further, respondent argues that termination is not necessary to establish

boundaries around his contact with Danny because such boundaries are already within the court's control in the juvenile proceeding or in a Chapter 50 custody case.

Respondent's arguments amount to an invitation that we substitute our judgment for that of the trial court. However, the decision regarding how to weigh the factors rests solely with the trial court. We may review the court's determination only for an abuse of discretion. Given that respondent has not had any contact with Danny since 2007, has been incarcerated periodically throughout Danny's life, is currently in prison, and has no relationship with Danny, and given the strong bond between Danny and his mother and Mr. C., we discern no abuse of discretion in the trial court's determination that termination was in Danny's best interest. Accordingly, we affirm the order terminating respondent's parental rights.

Affirmed.

Chief Judge MARTIN and Judge STROUD concur.

Report per Rule 30(e).