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NO. COA14-651  
NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

IN THE MATTER OF:

M.S.K.,  
A Minor Child.

Caldwell County  
No. 11 J 12

Appeal by respondent from order entered 12 March 2014 by Judge Robert M. Brady in Caldwell County District Court. Heard in the Court of Appeals 27 October 2014.

*Lucy R. McCarl for petitioner-appellee.*

*David A. Perez for respondent-appellant.*

*Penry Riemann PLLC, by Neil A. Riemann, for guardian ad litem.*

GEER, Judge.

Respondent mother appeals from the trial court's order terminating her parental rights to her child, M.S.K. ("Mark").<sup>1</sup> Respondent mother does not challenge the trial court's conclusion that grounds exist to terminate her parental rights. On appeal, she challenges only the sufficiency of the trial

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<sup>1</sup>The pseudonym "Mark" is used throughout this opinion to protect the privacy of the minor child and for ease of reading.

court's findings of fact under N.C. Gen. Stat. § 7B-1110(a) (2013) and argues the trial court abused its discretion in terminating her parental rights. We disagree and hold that the trial court made sufficient findings as to each of the factors set out in N.C. Gen. Stat. § 7B-1110(a), and, based on those findings, we cannot conclude that the trial court abused its discretion in determining that termination of parental rights was in the best interests of Mark. Accordingly, we affirm the trial court's order.

#### Facts

On 14 January 2011, the Caldwell County Department of Social Services ("DSS") obtained nonsecure custody of Mark and filed a juvenile petition alleging that five-year-old Mark was an abused, neglected, and dependent juvenile. The petition alleged, *inter alia*, that Mark was sexually abused by his father, uncle, and maternal grandfather; that respondent mother was living with the uncle in violation of a DSS safety plan; that respondent mother was unemployed and lacked housing; and that Mark was having difficulties at school. In an adjudication order entered on 9 May 2011, the trial court concluded, based on respondent mother's stipulation, that Mark was a neglected juvenile. In a separate disposition order, the trial court concluded that it was in Mark's best interests to remain in DSS

custody and continue with a permanent plan of reunification with respondent mother.

On 26 October 2011, the trial court authorized a trial home placement with respondent mother. During the trial home placement, Mark's behaviors deteriorated significantly. Respondent mother was residing in the home of the maternal grandfather where Mark had previously been sexually molested, and the maternal grandfather was residing in the immediate neighborhood. Respondent mother remained dependent on the maternal grandfather to meet her daily needs, and twice workers providing intensive in-home services found the grandfather present in the home. Although Mark was not there either time, the presence of the grandfather was of concern since the trial court had ordered that the child have no contact with the grandfather.

Respondent mother had little awareness of the impact on Mark of living at the residence where he had been molested and the grandfather's proximity. Indeed, at the termination of parental rights hearing, respondent mother insisted that the maternal grandfather had not molested Mark, even though she had stipulated that the allegation was true at the time of the initial adjudication. The trial court terminated the first trial home placement because of Mark's regression and

deterioration and because of respondent mother's inability to meet Mark's needs.

In August 2012, the trial court attempted a second trial home placement. However, the court ended the placement on 13 December 2012 after DSS received a report from the Alexander County Department of Social Services regarding the living conditions of respondent mother and Mark. Respondent mother was, at that time, living with Chad Bolick who had previously had involvement with child protective services. Mark was removed from the second trial home placement when law enforcement arrived at the home and discovered that Mark was alone with Mr. Bolick and another male who had an outstanding warrant for his arrest. Other individuals residing on the property also had outstanding warrants for their arrest, and one was a sex offender. In addition, people on the property were using drugs, although respondent mother had negative drug tests.

On 27 March 2013, the trial court entered a permanency planning review order ceasing reunification efforts with respondent mother. The court found that each time that Mark was allowed to reside with respondent mother, he regressed. With respect to respondent mother, the court found that since the time that Mark came into the care of DSS, respondent mother's situation had not changed much. She continued to depend on her

father who was not allowed to be in her home or around Mark. She continued to be unemployed or underemployed and to rely on others for a place to live and basic necessities. She was dishonest with professionals assisting her with services and was inconsistent in her cooperation with receiving services needed for Mark. Based upon these findings, the court concluded that ceasing reunification efforts with respondent mother was in Mark's best interests.

On 22 July 2013, DSS filed a motion to terminate both parents' rights to Mark. Following a hearing on 11 February 2014, the trial court entered an adjudication and disposition order on 12 March 2014. The trial court found that there existed grounds for termination of both parents' parental rights, including, with respect to respondent mother, (1) neglect, (2) failure to make reasonable progress in eliminating the conditions that had led to Mark's removal, and (3) dependency. See N.C. Gen. Stat. § 7B-1111(a)(1), (2), (6) (2013). The trial court then concluded that termination of the parental rights of both parents was in Mark's best interests. Respondent mother timely appealed the order to this Court.<sup>2</sup>

Discussion

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<sup>2</sup>Mark's father is not a party to this appeal.

Termination of parental rights proceedings involve a two-stage process: (1) the adjudication stage, where the petitioner is required to prove the existence of grounds for termination, and (2) the disposition stage, where the court considers the best interests of the juvenile. *In re White*, 81 N.C. App. 82, 85, 344 S.E.2d 36, 38 (1986). This Court reviews the trial court's best interests determination for abuse of discretion. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001).

Respondent mother does not challenge the trial court's conclusion that grounds exist to terminate her parental rights. On appeal, she argues only that the trial court failed to make appropriate findings of fact as required by N.C. Gen. Stat. § 7B-1110(a) and that it abused its discretion in determining that termination of parental rights is in the best interests of Mark.

N.C. Gen. Stat. § 7B-1110(a) provides 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 juvenile's best interest." In so doing, the trial court is required to consider the following factors and make findings on those 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.

*Id.*

Respondent mother first contends that the trial court erred with respect to its consideration of the quality of the relationship between the juvenile and the proposed adoptive parents. The trial court addressed this factor in finding of fact 1:

[Mark] has been in the same foster home for over one and one-half years but this is an older couple and they want the minor child to be adopted by a younger family who can better meet his needs. The minor child is very bonded to these foster parents and they are committed to maintaining a relationship with the minor child after he transitions into his potential adoptive home. [DSS] has identified a potential adoptive home for the minor child and he has begun visiting with this family. The minor child displayed some anxiety, at first, with this new family, but he has begun the process of integrating into their family through the visits. The potential adoptive parents are former therapeutic foster parents and have special training to assist in meeting the needs of

the minor child. They have met all requirements to adopt the minor child.

This finding is supported by testimony from Mark's social worker that an initial visit with Mark's potential adoptive family occurred on 9 February 2014, a few days before the hearing. The social worker testified that the visit "went well," elaborating that:

[Mark], although he's overall a happy child, he does have some anxiety issues, especially around people he does not know. So the first probably hour of the visit, he was quiet, shy, didn't really engage very much. But over the course of the visit, especially when allowed to play, his personality came out and he began to engage with the family more.

She further testified that Mark "will continue doing visits; and depending on his reaction, we'll determine the speed at which . . . we go through the process."

Respondent mother argues, however, that the finding is not supported by the evidence because Mark had only met with his prospective adoptive family once and, thus, could not be found to have "begun the process of integrating into their family through the visits." We disagree. The evidence shows that the process of integrating into the family would involve multiple visits with the family and that Mark began this process through his first visit. While we recognize that the wording of this finding is ambiguous and could be more precise, the reference to



"visits" need not be read as finding that more than one visit had already occurred, but rather can be read as simply indicating that the "process" of integration would occur through visits, a finding supported by the evidence.

Respondent mother also asserts that "there was no quality relationship existing between the prospective adoptive parents and Mark." However, nothing in N.C. Gen. Stat. § 7B-1110(a)(5) requires that the prospective adoptive family have a "quality relationship" with the juvenile before terminating parental rights. Rather, this section requires simply that the trial court consider "[t]he quality of the relationship between the juvenile and the proposed adoptive parent" in making the best interest determination. *Id.* Finding of fact 1 shows that the trial court found that Mark was in the very beginning stages of the "process of integrating into their family." We hold that the trial court adequately considered this factor.

Next, respondent mother argues that the trial court did not "squarely" address the likelihood of adoption. The trial court addressed this factor in finding of fact 1, quoted above, and also finding of fact 5, which states:

The permanent plan for the minor child is adoption and a potential adoptive family is working with the minor child to establish a relationship. They are familiar with the issues that the minor child has and, based on their prior training as therapeutic

foster parents, are well prepared to meet the needs of the minor child.

These findings show that the trial court acknowledged that a family had been identified that was uniquely qualified to meet the particular needs of Mark and that Mark had begun the process of integrating himself into the family.

Although the trial court did not specifically quantify the likelihood of adoption, these facts increase the likelihood that the adoption will occur. We hold that the trial court adequately considered and made findings regarding the likelihood of adoption. *Cf. In re D.H., D.H., K.H.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 753 S.E.2d 732, 735-36 (2014) (holding trial court made sufficient findings concerning likelihood of adoption where "court made findings with respect to each child's current emotional state, that each child's emotional state would likely improve once the uncertainty about their status was lifted, and that '[w]ith continued therapeutic support[,] these children are likely to be adoptable'").

Next, respondent mother challenges finding of fact 3, which addressed the bond between parent and child:

The minor child does love the Respondent mother but his behaviors regressed significantly when he was having contact with her and he displayed anxiety about such contact. He has particular needs for counseling and stability which the

Respondent mother is unable or unwilling to meet.

Respondent mother argues that this finding is "misleading" and "improper." She asserts that "Mark's behaviors regress 'significantly' only in that he loves his mother, desires to be with her, and this causes him to lose some concentration at school."

The finding is, however, amply supported by evidence that Mark's behavior regressed when visitations with respondent mother increased in frequency and during trial placements with respondent mother. Regardless of Mark's love for his mother and desire to be with her, this evidence supported the finding that respondent mother is unable or unwilling to meet Mark's needs when he is in her care. Therefore, we find nothing improper or misleading in this finding of fact.

Respondent mother also submits that she loves Mark, was willing to do anything to keep him, and had made progress at the time of the hearing. Therefore, she argues, severing the parent-child relationship was not in Mark's best interest. We are not persuaded. At the disposition stage, the trial court's focus is on the best interest of the child and not the circumstances surrounding the parents. See *In re Montgomery*, 311 N.C. 101, 109, 316 S.E.2d 246, 251 (1984) ("[T]he fundamental principle underlying North Carolina's approach to

controversies involving child neglect and custody [is] that the best interest of the child is the polar star."). In other words, "the child[ren] and [their] best interests are at issue here, not respondent's hopes for the future." *In re Blackburn*, 142 N.C. App. 607, 614, 543 S.E.2d 906, 911 (2001).

After our review of the record, we conclude that the trial court weighed the evidence and made a reasoned decision that termination of respondent mother's parental rights is in Mark's best interest. We find no abuse of discretion in this determination, and we therefore affirm the order of the trial court terminating respondent mother's parental rights.

Affirmed.

Judges STEPHENS and McCULLOUGH concur.

Report per Rule 30(e).