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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1320

Filed: 21 June 2016

Nash County, No. 13 JT 137

IN THE MATTER OF: J.O.M.

Appeal by respondent-mother from order entered 25 August 2015 by Judge William G. Stewart in Nash County District Court. Heard in the Court of Appeals 31 May 2016.

Jayne B. Norwood for petitioner-appellee Nash County Department of Social Services.

David A. Perez for respondent-appellant mother.

Smith Moore Leatherwood, LLP, by Carrie A. Hanger, for guardian ad litem.

INMAN, Judge.

Respondent appeals from an order terminating her parental rights to her minor child J.O.M. (“Jennifer”).¹ We affirm the trial court’s order.

On 10 March 2012, the Nash County Department of Social Services (“DSS”) became involved with respondent’s family after respondent was found passed out on a sidewalk accompanied by three-year-old Jennifer. In response to the incident, DSS arranged for mental health services to be provided for respondent and placed Jennifer

¹ A pseudonym is used to protect the identity of the juvenile and for ease of reading.

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solely in the custody of her father. Following a March 2013 incident in which a neighbor had to kick in the door to respondent's home to retrieve Jennifer after respondent left Jennifer home alone, Jennifer's father asked respondent to leave because he was concerned for Jennifer's safety. Respondent left the area for three to four months, providing no information of her whereabouts to Jennifer's father or DSS.

On 2 December 2013, DSS filed a juvenile petition alleging that Jennifer was an abused and neglected juvenile based upon respondent's mental health issues and her failure to care for and supervise Jennifer, and upon allegations of sexual abuse of Jennifer by her father. After a hearing held 6 February 2014, the trial court entered an Adjudication and Disposition Order on 29 April 2014 finding Jennifer to be an abused and neglected juvenile and ordering that she be placed in the custody of DSS.

After a 6 March 2014 permanency planning hearing, the trial court ordered a permanent plan of adoption on 19 May 2014 after finding that Jennifer's parents did not demonstrate that they had addressed the issues that led to the removal of their child. On 25 June 2014, DSS filed a motion to terminate respondent's parental rights, alleging grounds of neglect and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (6) (2015). The trial court held a hearing on the motion on 16 July 2015 and entered an order terminating respondent's parental rights on 25 August 2015. The court heard evidence regarding respondent's mental health issues, including diagnoses of bipolar disorder, post-traumatic stress disorder, and borderline personality disorder, and

found that respondent “frequently changes her therapist and her medications[,] which does not allow professionals the time to evaluate her progress or determine whether it is beneficial.” The court found that, while respondent clearly loved Jennifer, she lacked the ability to parent her. The trial court adjudicated the existence of both grounds alleged in the motion and concluded that termination of respondent’s parental rights was in Jennifer’s best interests.² Respondent filed notice of appeal from the trial court’s order on 14 September 2015.

On appeal, respondent first argues that the trial court erred by failing to make written findings required under N.C. Gen. Stat. § 7B-1110(a) (2015) in order to determine whether terminating parental rights is in a child’s best interests. Respondent interprets the statute as requiring the trial court to make written findings regarding each criterion set forth in N.C. Gen. Stat. § 7B-1110(a), and contends that the trial court erred by failing to make written findings as to the criteria in N.C. Gen. Stat. § 7B-1110(a)(2) and (4). Respondent’s argument is misplaced.

N.C. Gen. Stat. § 7B-1110(a) provides, in relevant part:

- (a) After 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. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-

² The trial court also terminated the parental rights of Jennifer’s father in the termination order. Jennifer’s father participated in the termination hearing and did not oppose the trial court terminating his parental rights.

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1, Rule 801, 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.

N.C. Gen. Stat. § 7B-1110(a) (2015). In *In re D.H.*, 232 N.C. App. 217, 753 S.E.2d 732 (2014), this Court held that while “the language of [N.C. Gen. Stat. § 7B-1110(a)] requires the trial court to ‘consider’ all six of the listed factors,” the statute does not “require[] the trial court to make written findings with respect to all six factors; rather, as the plain language of the statute indicates, the court must enter written findings in its order concerning only those factors ‘that are relevant.’” *Id.* at 220-21, 753 S.E.2d at 735 (citing *In re J.L.H.*, 224 N.C. App. 52, 59, 741 S.E.2d 333, 338 (2012)). “[A] factor is ‘relevant’ if there is ‘conflicting evidence concerning’ the factor, such that it is ‘placed in issue by virtue of the evidence presented before the trial court[.]’” *In re H.D.*, ___ N.C. App. ___, ___, 768 S.E.2d 860, 866 (2015) (quoting *D.H.*, 232 N.C. App. at 222 n.3, 753 S.E.2d at 735 n.3).

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In the present case, the termination order explicitly states that the trial court “considered all the factors set out in [N.C. Gen. Stat. § 7B-1110(a)],” and that it was setting “out in writing those factors considered by [the court] to be particularly relevant.” The trial court cited numerous factors listed under the statute as being relevant to its decision, including: that Jennifer was six years old, *see* N.C. Gen. Stat. § 7B-1110(a)(1), that termination of parental rights would assist in achieving the permanent plan of adoption, *see* N.C. Gen. Stat. § 7B-1110(a)(3), that Jennifer had bonded with her foster family and considered them to be her family, *see* N.C. Gen. Stat. § 7B-1110(a)(5),³ and that respondent’s instability due to her mental health issues rendered her “unable to demonstrate that she can meet the significant needs of a young child as she is currently unable to handle and cope with her own issues[,]” *see* N.C. Gen. Stat. § 7B-1110(a)(6). Respondent does not argue that there was conflicting evidence as to the strength of the bond between Jennifer and respondent or whether there was a likelihood of adoption of Jennifer. Nothing in the record or transcript indicates that there was conflicting evidence presented as to these statutory factors that would render those factors “relevant.” Thus, the trial court was not required to make written findings as to the factors listed in N.C. Gen. Stat. § 7B-1110(a)(2) and (4), and respondent’s contention to the contrary is without merit.

³ These findings were listed in the trial court’s order as a conclusion of law. The mislabeling of findings of fact as conclusions of law is not fatal to the order. *See In re J.H.*, ___ N.C. App. ___, ___ n.5, 780 S.E.2d 228, 241 n.5 (2015).

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Respondent next contends that the trial court erred and abused its discretion in finding and concluding that it was in Jennifer's best interests to terminate respondent's parental rights. "After the trial court has determined grounds exist for termination of parental rights at adjudication, the court is required to issue an order of termination in the dispositional stage, unless it finds the best interests of the child would be to preserve the parent's rights." *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001) (citation omitted). A trial court's determination of the child's best interests is reviewed for abuse of discretion and is reversible "only where [the court's decision] is 'manifestly unsupported by reason.'" *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (quoting *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980)), *aff'd*, 363 N.C. 368, 677 S.E.2d 455 (2009).

Without challenging any of the trial court's findings specifically, respondent characterizes much of the evidence introduced at the termination hearing as supporting the conclusion that terminating respondent's parental rights was not in Jennifer's best interests. Respondent notes that the trial court found that she had made "significant progress in addressing her mental instability[,] " that the trial court found that she loved Jennifer, and that respondent had a room available for Jennifer in the house she was renting.

Notwithstanding the evidence cited by respondent, we find no abuse of discretion by the trial court. As noted above, the court found that respondent's mental

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health issues had previously put Jennifer at risk of harm and left her in an unstable home environment. In addition, the court found that, despite respondent's efforts to address her mental health issues, there had not been a sufficient showing that respondent's mental health issues had improved to a point that Jennifer's safety and stability would no longer be jeopardized under respondent's care. By contrast, the court found that Jennifer had bonded with her foster family, who had expressed their desire to adopt her. We cannot say that the trial court's determination that termination of parental rights was in Jennifer's best interests was manifestly unsupported by reason given the above-listed facts. As a result, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).