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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-156

Filed: 20 September 2016

Guilford County, No. 13 JT 387

IN THE MATTER OF: P.E.P.

Appeal by respondent-mother from order entered 25 November 2015 by Judge Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 24 August 2016.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Robert W. Ewing for respondent-appellant mother.

Administrative Office of the Courts, by Appellate Counsel Matthew D. Wunsche, for guardian ad litem.

ZACHARY, Judge.

Respondent appeals from an order terminating her parental rights to her minor child, P.E.P. (“Peter”).¹ Because the trial court did not abuse its discretion in concluding that termination of respondent’s parental rights is in Peter’s best interest, we affirm.

¹ Pseudonyms are used throughout for ease of reading and to protect the identity of the juvenile.

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The Guilford County Department of Health and Human Services (“DHHS”) became involved with respondent and Peter in July 2013, when it received a report that respondent was not providing proper care for another child in her home, as evidenced by that child’s developmental delays and alarming weight loss. Upon investigating the report, DHHS learned that respondent had recently given birth to Peter, who had been born prematurely at 24 weeks and suffered from numerous medical problems that necessitated his placement in the Neo-natal Intensive Care Unit (“NICU”) at Duke University Hospital. Respondent agreed to place her older child with the child’s biological father so that she could focus on caring for Peter.

Further investigation by DHHS showed that respondent had not visited with Peter in the NICU with any regularity, which was essential in order for her to obtain the necessary training to deal with Peter’s medical issues. Additionally, DHHS learned that Peter’s father had a prior conviction for drug charges and prior charges of domestic violence against multiple women, including respondent. New allegations of domestic violence arose in November 2013, when Peter’s father assaulted respondent. As a result of its investigation, DHHS filed a petition on 8 November 2013 alleging that Peter was a neglected and dependent juvenile and obtained non-secure custody of Peter.

On 8 January 2014, Judge Tabatha P. Holliday conducted a hearing on the juvenile petition. The court entered an order on 31 January 2014, in which it

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concluded that Peter was a dependent juvenile but dismissed the allegation of neglect. The court continued custody of Peter with DHHS and directed DHHS to continue to make reasonable efforts toward reunifying Peter with respondent. The court also directed respondent to comply with the case plan developed for her by DHHS and granted her twice-weekly supervised visitation with Peter. Respondent, however, failed to comply with her case plan, and by order entered 9 December 2014, Judge Randle L. Jones set the permanent plan for Peter as adoption, with a concurrent plan for reunification. Judge Jones found that “[l]egal guardianship of custody with a relative should not be pursued. [DHHS] has located no relative placement for the juvenile.

DHHS filed a motion to terminate respondent’s parental rights to Peter on 19 June 2015, alleging, as to respondent, grounds of neglect, willful failure to make reasonable progress to correct the conditions that led to the removal of Peter from her care, willful failure to pay a reasonable portion of the cost of care for Peter, and dependency. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (6) (2015). After a three-day hearing on the motion, the trial court entered an order on 25 November 2015 terminating respondent’s parental rights on all four grounds alleged in the motion.² Respondent filed timely notice of appeal.

² The order also terminated the parental rights of Peter’s father, but he is not a party to this appeal.

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Respondent's sole argument on appeal is that the trial court abused its discretion in concluding that termination of her parental rights was in Peter's best interest. Respondent contends that there was insufficient evidence presented to support the court's findings that Peter's likelihood for adoption was high, and that termination of respondent's parental rights was not in Peter's best interest because he had a bond with respondent. We disagree.

"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." N.C. Gen. Stat. § 7B-1110(a) (2015). When determining whether it is in a juvenile's best interest to terminate parental rights, the trial court must consider the factors set forth in N.C. Gen. Stat. § 7B-1110, which include the juvenile's age, the likelihood of the adoption of the juvenile, whether termination will accomplish the permanent plan for the juvenile, the bond between the juvenile and the parent, and the quality of any relationship between the juvenile and any potential adoptive parent, guardian, or custodian. N.C. Gen. Stat. § 7B-1110(a)(1)-(5).

"The decision to terminate parental rights is vested within the sound discretion of the trial [court] and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citation omitted). We are bound by the trial court's findings of fact "where there is some evidence to support those

findings, even though the evidence might sustain findings to the contrary.” *In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984).

Here, the trial court made numerous findings of fact addressing each of the factors set forth in N.C. Gen. Stat. § 7B-1110(a), before concluding that termination of respondent’s parental rights is in Peter’s best interest. Respondent only challenges the court’s findings and conclusions with regard to Peter’s adoptability and her bond with Peter, regarding which the trial court found, in Finding of Fact No. 104:

b. The likelihood of adoption is high despite the juvenile’s special needs given his young age and the fact that a prospective adoptive family has already been located. The prospective adoptive parents, who are not licensed foster parents and are also not relatives, requested that the juvenile be placed with them. The Department conducted a home study and approved the prospective adoptive parents for placement, they have already been visiting with the juvenile, and the Honorable Randle Jones has approved placement of the juvenile in that unlicensed, non-relative home. Although the juvenile has already had two placements since he has been in custody, those two placements made it clear from the beginning that adoption was not a possibility in their respective homes.

.....

d. There is [not]³ an appropriate bond between the juvenile and [respondent]. During the visitation sessions the Guardian *ad Litem* attended, [respondent] did not engage in play with the juvenile. [Respondent] struggles to communicate with the juvenile because the juvenile uses sign language and [respondent] has not learned that language. The juvenile does not cry or appear

³ Because this finding details the absence of a bond between respondent and P.E.P., we conclude that the omission of the word “not” was a typographical error.

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sad when he separates from [respondent] at the end of a visit. . . .

e. The quality of the relationship between the juvenile and his current foster parents is high. The juvenile responds well to the foster mother and has developed a positive bond with both of his foster parents. The foster parents have an adopted son with substantial special needs who also lives in the home and it appears that the two children compete for attention. An unlicensed, non-relative couple came forward requesting placement of the juvenile in their home and expressed a desire to adopt the juvenile should he become legally free for adoption. The Honorable Randle Jones has just recently approved the couple for placement; however, the juvenile has not yet been placed in the home. The juvenile's relationship with the prospective adoptive parents is minimal at this point given that the juvenile is not yet living in their home. However, the prospective adoptive parents have had visits with the juvenile and the juvenile appears to be at home while in their presence. The Guardian *ad Litem* attended one of those visits and observed the juvenile laughing and playing with the prospective adoptive parents freely.

. . . .

g. The proposed adoptive mother is fifty-seven years old and will soon turn fifty-eight. The prospective adoptive father is sixty-four years old and will soon turn sixty-five. When the juvenile is placed in the home of the prospective adoptive parents, he will be the only child in the home and so he will be able to get the one-on-one attention he desires. The prospective adoptive mother works with disabled individuals at Lindley Habilitation, and she has already attended some of the juvenile's medical appointments.

Respondent argues that the trial court's finding that the likelihood of Peter's adoption is high is not based on convincing evidence, given Peter's medical conditions,

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behavioral issues, developmental delays, and multiple placements while in foster care. Respondent contends that because she believes Peter does not have a likelihood of being adopted, termination of her parental rights is not in Peter's best interest due to her bond with Peter. Although respondent raises plausible concerns about Peter's adoptability, she ignores the evidence before the trial court to reach her desired conclusions.

The mere fact that Peter had been placed in two different foster homes during the pendency of the underlying juvenile case does not suggest that he is unadoptable. Beyond the fact that the first foster parents were relinquishing their license, no reason for the cessation of the first placement appears in the record. Peter's second placement was not a prospective adoptive placement and was disrupted due to Peter's behavior toward the foster parents' own child, who had special needs and began regressing in his behaviors with Peter in the home. Moreover, Peter's Guardian *ad litem* testified that she believed Peter's likelihood of adoption is very high given the new prospective adoptive parents that had been identified in the case and to whom placement of Peter was being given. The prospective adoptive parents were well aware of Peter's issues, had experience taking developmentally handicapped children and adults into their home, and their home had been approved for Peter's placement. The new potential adoptive parents have no other children in their home, which will

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assist in addressing the behavioral issues that Peter exhibited while competing for attention from his foster parents with their other child.

In addition, Peter's Guardian *ad litem* testified that respondent did not "engage very well" with Peter. In her report, which was accepted into evidence by the trial court, Peter's Guardian *ad litem*, who had most recently observed respondent and P.E.P. when the child was nineteen months old, described respondent's bond with Peter as "superficial" and noted that Peter was not distressed when respondent left him at the end of visitations. Statements made by respondent at the hearing further suggested that she did not understand the full nature of Peter's medical, behavioral, and developmental issues. Respondent also had a history of missing scheduled visits with Peter and had not learned sign language so that she could communicate with him.

Accordingly, we hold that the trial court's findings of fact regarding Peter's adoptability and his bond with respondent are supported by clear, cogent, and convincing evidence. Respondent did not have a strong bond with Peter, and DHHS had identified prospective adoptive parents for Peter who were aware of his issues. Peter's disrupted foster care placements and his medical, developmental, and behavioral issues are insufficient to deem him unadoptable. The trial court's findings show that it considered the statutory factors set forth in N.C. Gen. Stat. § 7B-1110(a), and we cannot say the trial court's ultimate conclusion is manifestly unsupported by

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reason. We therefore hold the trial court did not abuse its discretion when it concluded that it is in Peter's best interest to terminate respondent's parental rights. Respondent has not otherwise challenged the trial court's order, and we thus affirm the order terminating respondent's parental rights to Peter.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).