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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-220

Filed: 6 September 2016

Guilford County, Nos. 13 JT 484-85

IN THE MATTER OF: E.R.S. and C.N.S.

Appeal by Respondent from order entered 30 November 2015 by Judge Betty J. Brown in Guilford County District Court. Heard in the Court of Appeals 15 August 2016.

Mercedes O. Chut for Petitioner Guilford County Department of Health and Human Services.

Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for Respondent.

STEPHENS, Judge.

Respondent is the mother of E.R.S. (“Erin”), born in June of 2007, and C.N.S. (“Cathy”), born in March of 2010. She appeals from an order terminating her parental rights to both children.¹ For the reasons explained below, we affirm.

¹ We use these stipulated pseudonyms for the children for confidentiality and ease of reading. See N.C.R. App. P. 3.1(b).

Factual and Procedural History

On 19 August 2013, Petitioner Guilford County Department of Health and Human Services (“DHHS”) received a report that the juveniles’ biological father,² who is severely diabetic, was taken to a hospital by Emergency Medical Services the previous day and that the home was discovered in a filthy and unlivable condition, with flies and roaches everywhere, maggots crawling through holes in the floor, dirty dishes all over the house, and animal feces on the floor. The juveniles’ father had dried feces on his feet, and the juveniles were walking barefoot around the house. DHHS investigated, determined the home had safety issues, and arranged for Respondent and the juveniles to reside at a Salvation Army shelter beginning on 23 August 2013.

On 24 November 2013, DHHS received a report that Erin’s maternal grandmother had taken her to the emergency department of High Point Regional Medical Center after Erin disclosed that her father put something in her vagina. A social worker met with Respondent on 6 December 2013, and Respondent agreed not to allow the juveniles to have any contact with their father while the matter was being investigated.

² According to the record on appeal, Erin’s legal father, D.A., is not her biological father. D.A. has apparently denied paternity of either juvenile in this matter and has had no contact with the children and no involvement with the case since its inception. All references to the juveniles’ father in this opinion refer to their biological father.

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On 20 December 2013, DHHS filed juvenile petitions alleging that Erin was a neglected, abused, and dependent juvenile and Cathy was a neglected and dependent juvenile. The court granted nonsecure custody to DHHS on the same date, and DHHS placed the children in a licensed foster home.

On 3 April 2014, the district court conducted an adjudicatory and disposition hearing, and adjudicated the girls as neglected and dependent juveniles. DHHS voluntarily dismissed its claim that Erin was an abused juvenile. The court awarded custody of the juveniles to DHHS.

The court subsequently held a ninety-day review hearing in June 2014 and a permanency planning review hearing in September 2014. After a permanency planning review hearing in February 2015, the court changed the permanent plan from reunification to adoption.

On 8 April 2015, DHHS filed a petition to terminate the parental rights of the Respondent.³ The district court conducted hearings on 31 August and 26 October 2015, and on 30 November 2015, filed an order terminating Respondent's parental rights on grounds that she (1) neglected the juveniles and (2) willfully left them in foster care without showing to the court that reasonable progress had been made in

³ The petition also alleged grounds existed to terminate the parental rights of Erin's legal father, D.A., and the juveniles' biological father. In the same order that terminated Respondent's parental rights, the district court terminated the parental rights of both fathers, neither of whom is a party to this appeal.

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correcting the conditions which led to their removal. Respondent filed notice of appeal on 17 December 2015 from the order terminating her parental rights.

Discussion

On appeal, Respondent does not challenge the court's adjudication of the existence of grounds to terminate her parental rights. She argues only that the court abused its discretion by terminating her parental rights because its findings of fact fail to explain why it is in the best interests of the juveniles that her parental rights be terminated. We disagree.

Termination of parental rights involves two stages: adjudication and disposition. *In re D.R.B.*, 182 N.C. App. 733, 735, 643 S.E.2d 77, 79 (2007). During the adjudication phase, the court "examines the evidence and determines whether sufficient grounds exist under N.C. Gen. Stat. § 7B-1111 to warrant termination of parental rights." *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736 (2004) (citation omitted), *affirmed per curiam*, 359 N.C. 405, 610 S.E.2d 199 (2005). If the court determines that one or more grounds for terminating a parent's rights exist, it then proceeds to the disposition phase and makes a discretionary determination whether terminating the parent's rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2015). "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002) (citation omitted).

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In determining whether termination of parental rights is in the best interest of a juvenile, the district court must 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). While the court must consider all of these factors, it is only required to make written findings of fact regarding those factors which are relevant and have an impact upon the court's decision. *In re D.H.*, __ N.C. App. __, 221, 753 S.E.2d 732, 735 (2014). A factor is relevant if there is conflicting evidence concerning the factor such that it is placed at issue in the case. *In re H.D.*, __ N.C. App. __, __, 768 S.E.2d 860, 866 (2015).

Here, the court cited in its order the following reasons for deciding to terminate Respondent's parental rights:

- A. The juveniles are ages five and eight years old, which makes it highly likely that they will be adopted.
- B. The Guardian *ad Litem* reports that the juveniles are young, bright and friendly, which also makes it highly

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likely that they will be adopted.

C. The termination of parental rights will aid in the adoption of the juveniles, in that termination of the parents' rights will free the children for adoption in order to find a safe and permanent home.

D. The juveniles do not know their legal father. There is no bond with him because he has not participated in these proceedings.

E. The juveniles do know their biological father . . . but they have not seen him in over one year, although they have spoken with him on the telephone, so it is difficult to determine the extent and nature of the bond.

F. As to the mother, the visits are easy-going and good-natured. The quality of the relationship and the nature of the bond between the juveniles and the mother is good.

G. The bond between the juvenile and her caretakers is good. The children are bonded to their caretakers and have expressed that they like living with them.

H. [Cathy] has expressed an interest in staying with the foster parents because they show they care for them. In addition, the children said back in July that they had concerns about staying in the house of the mother if the home had bugs and rats. The [c]ourt cannot return the children to the mother's home at this time.

Respondent argues the court erred by making findings on two irrelevant criteria: (1) that the bond between the juveniles and the caretakers is good and (2) that the girls had concerns about staying in their mother's home if it had bugs and rats. She also argues that reason (F) "ignores the evidence, and drastically shortchanges the depth of the familial bonds at issue in this case."

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We are not persuaded by Respondent's arguments. We first note that the criteria listed in section 7B-1110(a) is not exclusive, and, further, that subsection (6) of the statute expressly allows the district court to consider any factor that it deems relevant in determining the juvenile's best interest. The fact that the juveniles are able to form a strong bond with their caretakers in a temporary relationship tends to suggest that the children have the ability to form a strong bond with an adoptive parent, a highly relative point. Similarly, the fact that the children do not wish to return to a rat- or bug-infested home in which they would not feel safe is a relevant consideration in deciding what is in the children's best interest.

With regard to Respondent's argument that the court did not properly characterize her relationship with her daughters, we are unable to find prejudicial error in the court's use of the word "good" in its written order instead of the word "loving" as stated in open court in describing the relationship. As Respondent acknowledges, "[t]he general rule is that the trial court's written order controls over the trial judge's comments during the hearing." *Durham Hosiery Mill Ltd. P'ship v. Morris*, 217 N.C. App. 590, 593, 720 S.E.2d 426, 428 (2011) (citation omitted). Moreover, as this Court noted in *In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709-10 (2005), *affirmed per curiam, disc. review improvidently allowed*, 360 N.C. 475, 628 S.E.2d 760 (2006), a parental bond is only one factor to be considered, which

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the court may determine is outweighed by other factors in making a best interest determination.

A court may be reversed for abuse of discretion only if the appellant can show that its ruling “is so arbitrary that it could not have been the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Here, the court made findings of fact addressing the factors listed in section 7B-1110(a), and those findings provide a rational basis for the court’s decision. We find no abuse of discretion. Accordingly, the order terminating Respondent’s parental rights is

AFFIRMED.

Judges DAVIS and DIETZ concur.

Report per Rule 30(e).