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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-266

Filed: 6 September 2016

Caswell County, Nos. 10 JT 19-20

IN THE MATTER OF: E.A.L. and W.L., III, Juveniles

Appeal by respondents from order entered 27 October 2015 by Judge Mark Galloway in Caswell County District Court. Heard in the Court of Appeals 15 August 2016.

Stuart N. Watlington for Caswell County Department of Social Services, petitioner-appellee.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant mother.

Michael E. Casterline for respondent-appellant father.

Administrative Office of the Courts, by Deana K. Fleming, Associate Counsel, for guardian ad litem.

DAVIS, Judge.

D.L. (“Respondent-mother”) and W.L. (“Respondent-father”) (collectively “Respondents”) appeal from the trial court’s order terminating their parental rights

to their minor children E.A.L. (“Emma”) and W.L., III (“Wesley”).¹ After careful review, we affirm the trial court’s order.

Factual Background

Around April 2010, one of Respondents’ children, D.L. (“Debbie”), began losing weight and experiencing falling episodes, would nearly black out on occasion, and was not always able to climb stairs or chew her food. Respondents never sought medical care for Debbie despite the fact that “[her] condition was dramatically and obviously worsening to the point where she was in need of more medical expertise than the [Respondents] and family were able to provide” until 2 October 2010, when Debbie suffered a heart attack and was taken to the hospital.²

On 4 October 2010, Respondents were arrested on charges of felony child abuse. On 5 October 2010, an order for nonsecure custody was entered by the Honorable Mark Galloway in Caswell County District Court, and the Caswell County Department of Social Services (“DSS”) took nonsecure custody of Emma and Wesley.³

¹ Pseudonyms are used throughout this opinion to protect the identities of the minor children and for ease of reading. N.C.R. App. P. 3.1(b).

² Though Debbie survived the heart attack, she suffered irreversible brain damage and persisted in a vegetative state until she died in September 2013.

³ Respondents had another child, S.H., who was also taken into nonsecure custody. S.H. turned eighteen prior to the filing of the petitions to terminate parental rights and thus was not involved in the trial court’s termination proceedings.

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The following day, DSS filed juvenile petitions alleging that Emma and Wesley were neglected juveniles. On 4 January 2011, a hearing on DSS' petitions was held before Judge Galloway. On 5 April 2011, Judge Galloway entered an order adjudicating Emma and Wesley as neglected.⁴

In early 2011, Respondents were incarcerated after being charged with first-degree sexual offense and felony child abuse. Respondents' criminal attorneys advised them not to submit to psychological evaluations or to take other steps for reunification as set out in their case plans. As a result, Respondents essentially ceased making progress towards reunification.

After a permanency planning hearing held on 23 October 2012, the trial court entered an order on 27 December 2012 directing DSS to cease reunification efforts and changing the permanent plan for Emma and Wesley to adoption. On 23 August 2013, DSS filed petitions for termination of Respondents' parental rights to Emma and Wesley, alleging as grounds for termination that: (1) Respondents neglected the juveniles; (2) Respondents willfully left the juveniles in foster care or placement outside of the home for more than twelve months without showing reasonable progress in correcting the conditions that led to the removal of the juveniles; (3) after the juveniles had been placed in DSS' custody, Respondents, for a continuous period of six months, willfully failed to pay a reasonable portion of the cost of their care

⁴ This Court affirmed the adjudication order in an opinion filed 15 November 2011. *In re S.H.*, 217 N.C. App. 140, 719 S.E.2d 157 (2011).

despite being physically and financially able to do so; and (4) Respondents willfully abandoned the juveniles.

A hearing on the petition was held on 24 July 2015. On 27 October 2015, the trial court entered an order finding that grounds existed to terminate Respondents' parental rights and determining that termination was in the best interests of Emma and Wesley. Respondents filed timely notice of appeal.⁵

Analysis

On appeal, Respondents argue that the trial court abused its discretion in determining that the termination of Respondents' parental rights was in Wesley's best interests. Specifically, they contend that the trial court failed to consider the likelihood that Wesley would be adopted. We disagree.

The termination of parental rights statutes provide for a two-stage termination proceeding: an adjudication stage and a disposition stage. In the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a). If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest of the child, in accordance with N.C. Gen. Stat. § 7B-1110(a).

⁵ Petitioner and the guardian ad litem jointly moved to dismiss this appeal as it relates to Emma, arguing that because neither Respondent has argued in this appeal that the trial court erred in terminating their parental rights to Emma, Respondents have abandoned the portion of their appeal relating to Emma. Respondents did not oppose this motion. By order dated 19 July 2016, we granted the motion and dismissed Respondents' appeal as to Emma. Therefore, the only portion of the trial court's order currently before us is the court's termination of Respondents' parental rights as to Wesley.

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In re D.H., 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014) (internal citations omitted).

Here, Respondents do not challenge on appeal the trial court's determination that sufficient grounds for termination of their parental rights existed at the adjudication stage. Therefore, we need only consider whether the trial court abused its discretion during the dispositional stage in concluding that termination of Respondents' parental rights was in Wesley's best interests.

This Court reviews for abuse of discretion a trial court's determination that the termination of parental rights is in the juvenile's best interests. *In re Shepard*, 162 N.C. App. 215, 222, 591 S.E.2d 1, 6, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004). "An abuse of discretion occurs where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re J.L.*, 199 N.C. App. 605, 608-09, 685 S.E.2d 11, 14 (2009) (citation and quotation marks omitted).

N.C. Gen. Stat. § 7B-1110(a) provides that in determining whether the termination of parental rights is in a child's best interests,

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.

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- (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). “We believe that the language of this statute requires the trial court to consider all six of the listed factors, and that any failure to do so would constitute an abuse of discretion. . . . We do not believe, however, that N.C. Gen. Stat. § 7B-1110(a) requires 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.” *D.H.*, 232 N.C. App. at 220-21, 753 S.E.2d at 735 (internal citations and quotation marks omitted).

Respondents contend that the trial court abused its discretion in determining that termination of parental rights was in Wesley’s best interests because the trial court did not take into account the likelihood of Wesley ultimately being adopted. However, a review of the hearing transcript reveals that the trial court did, in fact, expressly consider this factor. At various points throughout these proceedings, the trial court was made aware of potential impediments to Wesley being adopted.

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Specifically, the trial court considered the fact that Wesley (1) performed poorly in school; (2) had a below average IQ; (3) was diagnosed with obsessive-compulsive disorder; (4) showed signs of an autism spectrum disorder; and (5) was 15 years old at the time of the hearing. The trial court further observed that Wesley had been prescribed medications to help stabilize his socially awkward behavior.

The trial court also noted that Wesley “is not currently in a home that is prepared to adopt him” and that “[h]e has challenges which will make his adoptability a bit more difficult than his sister[.]” However, the trial court also found that Wesley was “doing extremely well in foster care” and was “enjoying th[e] fact that his foster father is a mechanic and is willing to help [him] to learn how cars work.” Furthermore, the court found that “the family bonds of the children have been weakened by the neglect, by the arrest of the parties, [and] by the difficulty in ameliorating the neglect raised by the incarceration of the parents[.]” In addition, the trial court determined that

[Wesley’s] mother will not be released from prison until the spring of next year, in March of 2016[.] That his father . . . continues to be incarcerated, awaiting trial for murder. That [Wesley’s] need for permanency and his best interests would be better served by proceeding to adoption, rather than waiting and hoping that circumstances will develop which would make reunification in the best interest of the children.

Based on these findings, the trial court concluded that

Termination of Parental Rights would free [Wesley], so as

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to move out of the limbo that [he] would be in if we did not do that, at which [he has] been in for the last few years. That the Court finds that it is in the best interests of [Wesley] for [him] to be free for adoption, and be allowed to be in a permanent situation with a permanent family.

Thus, while the “challenges” associated with Wesley being adopted may have served as a factor weighing against an ultimate finding that the termination of Respondents’ parental rights was in Wesley’s best interests, the trial court properly balanced that factor against its other findings that (1) Wesley lacked finality as to his home and family life for several years; (2) he needed a permanent family; and (3) Respondents’ incarceration would delay any possible reunification. Given these findings and the fact that Wesley was “doing extremely well in foster care,” we cannot say that the trial court abused its discretion in determining that the termination of Respondents’ parental rights was in Wesley’s best interests.⁶

Conclusion

For the reasons stated above, we affirm the trial court’s 27 October 2015 order terminating Respondents’ parental rights.

AFFIRMED.

Judges STEPHENS and DIETZ concur.

Report per Rule 30(e).

⁶ Moreover, this Court has held that “nothing within N.C. Gen. Stat. § 7B-1110 . . . requires that termination lead to adoption in order for termination to be in a child’s best interests.” *In re M.M.*, 200 N.C. App. 248, 258, 684 S.E.2d 463, 470 (2009), *disc. review denied*, 364 N.C. 241, 698 S.E.2d 401 (2010).