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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-518

Filed: 20 December 2016

Wake County, No. 14 JT 90

IN THE MATTER OF: D.J.W-P.

Appeal by respondent from order entered 18 February 2016 by Judge Keith Gregory in Wake County District Court. Heard in the Court of Appeals 5 December 2016.

Office of the Wake County Attorney, by Roger A. Askew and Jennifer M. Jones, for petitioner-appellee Wake County Human Services.

Mobley Law Office PA, by Marie H. Mobley, for guardian ad litem.

N. Elise Putnam for respondent-appellant father.

McCULLOUGH, Judge.

Respondent, the father of D.J.W-P. (“Derek”)¹, appeals from an order terminating his parental rights. For the following reasons, we affirm.

I. Background

On 11 April 2014, Wake County Human Services (“WCHS”) received a report alleging Derek had bruising on his face, arms, and back from a belt used by respondent. At the time of the report, Derek resided with respondent in the paternal

¹ A pseudonym is used to protect the juvenile’s privacy and for ease of reading.

grandmother's home. WCHS received a second report on 17 April 2014 alleging that respondent was called to the school about Derek's behavior and arrived at the school under the influence of alcohol. The report further alleged that Derek became scared and feared for his life when he learned respondent was present at the school, and that Derek told school personnel his grandmother "gets mean as well" when she drinks wine. WCHS took Derek into nonsecure custody, and filed a juvenile petition on 22 April 2014 alleging that Derek was an abused, neglected, and dependent juvenile.

On 27 May 2014, the trial court entered a consent adjudication order adjudicating Derek as an abused and neglected juvenile. Respondent acknowledged there was sufficient evidence that Derek was physically abused while in his care, but did not admit that he abused Derek. The adjudication order required respondent to enter into an Out of Home Services Agreement wherein he agreed to complete a psychological assessment and follow all recommendations; complete a substance abuse assessment and follow all recommendations; refrain from the use of any impairing or illegal substances and comply with random drug screens; comply with parenting classes and demonstrate learned behavior; and, obtain and maintain legal income; and obtain and maintain safe, stable housing.

Following a permanency planning review hearing held on 3 August 2015, the trial court entered an order ceasing reunification efforts and changing the permanent plan to adoption. The trial court found that respondent did not have independent

housing, had not obtained sufficient income, and had not resolved his substance abuse issues in that he continued to relapse by using marijuana.

WCHS filed a motion to terminate respondent's parental rights on 31 August 2015 alleging the grounds of neglect and willful failure to make reasonable progress to correct the conditions that led to the removal of Derek from respondent's care.² See N.C. Gen. Stat. § 7B-1111(a)(1), (2) (2015). After a hearing, the trial court entered an order on 18 February 2016 terminating respondent's parental rights on the alleged grounds. Respondent filed written notice of appeal.

II. Discussion

On 16 June 2016, respondent filed a petition for writ of certiorari acknowledging defects in his notice of appeal, in that the juvenile's initials and date of birth were incorrect, and the notice referenced the underlying adjudication file number but not the termination file number. When the record indicates that the parent desired to appeal and cooperated with counsel's efforts to give proper notice of appeal, this Court may exercise its discretion pursuant to N.C. R. App. P. 21(a)(1) and issue a writ of certiorari to review orders terminating parental rights. *In re I.T.P-L.*, 194 N.C. App. 453, 460, 670 S.E.2d 282, 285 (2008), *disc. review denied*, 363 N.C. 581, 681 S.E.2d 783 (2009). Because it is clear from the record respondent

² The petition also moved to terminate the parental rights of Derek's mother. However, the mother relinquished her parental rights to Derek prior to the termination hearing and is not a party to this appeal.

desired to appeal the termination order, cooperated with counsel's efforts to enter notice of appeal, and relied on counsel to properly file notice of appeal, we allow respondent's petition for writ of certiorari.

Respondent does not challenge the trial court's adjudication that grounds exist to terminate his parental rights. Respondent's sole argument on appeal is that the trial court abused its discretion in concluding that termination of his parental rights was in Derek's best interest. 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). "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). 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).

Here, the trial court found that:

27. The permanent plan for the child is adoption and termination of the father's parental rights aids in the accomplishment of the permanent plan. The mother has relinquished her parental rights.

28. The father and child have a positive bond and loving relationship and do well in a controlled environment but the child still has unease about being returned to the home of his father.

29. The child has a positive bond with the prospective adoptive parent and looks to the prospective adoptive parent for care, comfort, and guidance.

30. The child has made tremendous progress since being placed in the home of the prospective adoptive parent. When this child was removed from the care of the father he needed to be hospitalized in a psychiatric facility.

31. The child has no developmental issues that would prevent his adoption and this is an adoptable child.

32. That it is in the best interests of the child that the parental rights of the father be terminated.

Respondent does not specifically challenge any of these findings of fact, and they are thus binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Respondent contends the trial court abused its discretion in terminating his parental rights because he and Derek shared a strong, loving bond and they both wanted to maintain a relationship. However, the trial court's findings of fact demonstrate that the court considered all of the requisite statutory factors in

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determining Derek's best interests. Additionally, at the hearing, the trial court conveyed the following:

There is a loving bond from the father to the son, and there's a loving bond from the son to his father. But I believe, in my humble opinion, this is what the epitome of best interest is. Even with that love, the father's addictions are overpowering him, and truly, I believe he wants to fight those addictions. And if there were enough time in this lifetime for him to do it, that might be possible, but [Derek] doesn't have that time commitment. He needs someone to care for him now, and that's capable of caring for him.

....

So I do believe it is in the best interest, as I said, with a heavy heart, to terminate the parental relationship of the father in this matter. But I do want it to be clear . . . that the [c]ourt recognizes there is a loving relationship between that father and his son. It's just that, even with that, the best interest of the child needs to be taken, obviously, and that's what the epitome is – he needs to have someone that is going to care for his interests, and [respondent] cannot do that.

Thus, although the trial court found that respondent and Derek had a loving relationship, it determined that Derek's positive relationship with his prospective adoptive parent and his need for a safe, permanent home outweighed the bond shared between respondent and Derek. Because the trial court properly considered all the statutory factors, and reached a reasoned decision based upon those factors, the trial court did not abuse its discretion in determining that termination of respondent's

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parental rights was in Derek's best interest. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).