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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-470

Filed: 20 November 2018

Wake County, Nos. 16 JT 42–43

IN THE MATTER OF: J.N.M. and L.K.M.

Appeal by respondent-mother from order entered 3 February 2018 by Judge Monica Bousman in Wake County District Court. Heard in the Court of Appeals 11 October 2018.

Office of the Wake County Attorney, by Mary Boyce Wells, for petitioner-appellee Wake County Human Services.

Leslie Rawls for respondent-appellant mother.

McGuireWoods LLP, by T. Richmond McPherson, III, for guardian ad litem.

DIETZ, Judge.

Respondent appeals from an order terminating her parental rights to her minor children Jamal and Lakeisha.¹ She argues that termination of her parental rights was not in her children’s best interests. As explained below, the trial court considered the applicable statutory criteria and, based on findings supported by the

¹ We use pseudonyms to protect the children’s identities.

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record, determined that termination was in the children's best interests. That determination was well within the trial court's sound discretion. We therefore affirm the trial court's order.

Facts and Procedural History

In February 2016, Wake County Human Services ("WCHS") filed a petition alleging Jamal and Lakeisha were abused and neglected juveniles. According to WCHS, Respondent had beaten Jamal with a belt causing bruising and swelling to his forehead, scratches on the left side of his face, and bruising on both legs. Respondent and her children lived with Respondent's mother, who agreed to be a safety resource for the children. Respondent moved out of her mother's house and agreed not to have contact with her children, but Jamal informed a social worker that Respondent continued to visit him. WCHS also alleged that Respondent had engaged in prior incidents of violent behavior toward Jamal and other family members and that there was a history of domestic violence between Respondent and the children's father. WCHS obtained non-secure custody of the children and, by April 2016, had placed the children with their maternal great aunt.

At a series of planning hearings from 2016 to 2017, the trial court ordered Respondent to attend various parenting and anger management programs and set the permanent plan as reunification. During this time, Respondent was arrested for

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simple assault on a child under 12, based on allegations that she threw grits in the face of her ten-year-old brother and punched him in the back of the head.

At a follow-up hearing on 22 May 2017, the trial court found that Respondent had completed some parenting and anger management training but that she had discontinued her individual anger management treatment after attending just two therapy appointments. The court found that Respondent would benefit from additional anger management counseling. The court also found that Respondent had refused to submit to a scheduled psychological evaluation. Finally, the court found that during Respondent's visits with her children, Respondent reacted poorly to the children's boredom, became easily frustrated, and struggled to control the children's behaviors. Respondent also expressed aggression toward the social worker during these visits, which caused the children to become anxious.

Ultimately, the court found that, although Respondent had made some progress on her case plan, she did not demonstrate appropriate parenting behaviors when visiting her children and her behaviors were inconsistent with the children's health and safety. The trial court changed the primary permanent plan for the children to adoption and ordered WCHS to file an action to terminate parental rights to the children. The secondary plan was set as reunification.

WCHS moved to terminate Respondent's parental rights on 19 July 2017 based on neglect, failure to make reasonable progress to correct the conditions that led to

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the removal of the children from her care, and failure to pay a reasonable portion of the cost of care for the children while they were placed outside of her care.

After a hearing, the trial court entered an order terminating Respondent's parental rights based on neglect and failure to make reasonable progress.² Respondent timely appealed, challenging only the trial court's determination that termination of parental rights was in her children's best interests.

Analysis

I. Challenge to the Standard of Review

Respondent's first argument is a novel one: She contends that, for the last decade or so, this Court has applied the wrong standard of review to the trial court's best interests determination in termination of parental rights cases. Respondent asserts that, when the General Assembly amended N.C. Gen. Stat. § 7B-1110 (first in 2005 and again in 2011) to require trial courts to make relevant findings based on a list of enumerated factors, it implicitly rejected abuse of discretion as the standard of review on appeal. Instead, Respondent argues, section 7B-1110 now requires this Court to review the trial court's findings of fact to determine if they are supported by competent evidence and to review the trial court's ultimate decision as a pure question of law subject to *de novo* review on appeal.

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

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We reject this argument. As the U.S. Supreme Court observed, quoting from a scholarly work on standards of review, “[o]ne of the ‘good’ reasons for conferring discretion on the trial judge is the sheer impracticability of formulating a rule of decision for the matter in issue. Many questions that arise in litigation are not amenable to regulation by rule because they involve multifarious, fleeting, special, narrow facts that utterly resist generalization.” *Pierce v. Underwood*, 487 U.S. 552, 561–62 (1988).

Our General Assembly understood this when it amended section 7B-1110. The legislature could have created a rule of decision; it could have listed the factors that must be *present* to conclude that termination is in a child’s best interests. Instead, the General Assembly listed factors that trial courts must *consider* (including, importantly, the all-encompassing factor “[a]ny relevant consideration”), but left the ultimate determination of best interests to the trial court’s discretion. N.C. Gen. Stat. § 7B-1110(a).

“[W]here matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Thus, although the trial court is required to make express fact findings in its analysis, the trial court’s ultimate determination of best interests remains a decision that this Court can review only for abuse of discretion. We therefore reject Respondent’s argument.

II. Best Interests Analysis

Respondent next argues the trial court abused its discretion in concluding that termination of her parental rights was in the children's best interests. We disagree.

In a best interests analysis, the trial court must consider the following criteria and make findings regarding any 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).

Here, the trial court made findings with respect to the relevant statutory criteria, and Respondent does not argue otherwise. But she contends that the trial court's findings ignored the children's behavioral and emotional problems and their difficulties during multiple foster care placements. She asserts that termination will sever "the children's only consistent lifelong relationship" and make the children "legal orphans with slim chance of adoption."

The trial court found otherwise:

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46. Although the children are not currently in a pre-adoptive placement, there is a high likelihood of adoption. The children are placed in separate foster homes, but enjoy some sibling visitation and have bonded to their current care providers. The children are capable of forming meaningful bonds with their care providers and would benefit from permanence. WCHS is pursuing an adoptive placement that would accept both children. With the appropriate supports in place, adoption is likely for both children.

This finding is supported by competent evidence, including the testimony of a social worker and the children's guardian ad litem, who submitted a detailed report to the trial court. Thus, under the appropriate standard of review, we must conclude that the court's findings are supported by competent evidence and that those findings demonstrate the court's best interests determination was well within the court's sound discretion. We therefore affirm the trial court's order.

AFFIRMED.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).