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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1248

Filed: 5 November 2019

New Hanover County, Nos. 16 JT 212-4

IN THE MATTER OF: A.L.M., J.C.W.M., & A.C.M.

Appeal by Respondent-Mother from order entered 30 August 2018 by Chief Judge J. H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 18 September 2019.

*New Hanover County Department of Social Services, by Karen F. Richards, Petitioner-Appellee.*

*Winston & Strawn LLP, by Tasha Sheehy, for guardian ad litem.*

*David A. Perez for Respondent-Appellant Mother.*

DILLON, Judge.

This appeal arises from a termination of parental rights action between Respondent-Mother (“Mother”) and the New Hanover Department of Social Services (“DSS”). We hold that the trial court did not err in determining that the termination

of Mother's parental rights was in the best interest of the three children, Anne, John, and Alex<sup>1</sup>.

### I. Background

Mother and the father of the three children were in a relationship that involved domestic violence and substance abuse while in the presence of the children. Because of these issues, DSS eventually took custody of the children.

Prior to the children being placed in the custody of DSS, the children were placed with the maternal grandparents for about three months. Due to the living conditions, DSS removed the children from the grandparents and eventually placed them with their foster mother.

During the Permanency Planning Hearing, the trial court found that changing the children's permanent plan from reunification to adoption was appropriate. The children continue to live with their foster mother.

### II. Standard of Review

For cases involving a termination of parental rights disposition, this Court reviews for an abuse of discretion. *See In re J.L.H.*, 224 N.C. App. 52, 57, 741 S.E.2d 333, 337 (2012). "The trial court is 'subject to reversal for abuse of discretion only upon a showing . . . that the challenged actions are manifestly unsupported by reason.'" *Id.* at 57, 741 S.E.2d at 337 (quoting *Clark v. Clark*, 301 N.C. 123, 129, 271

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<sup>1</sup>We use pseudonyms to protect the juveniles' identity and for ease of reading.

S.E.2d 58, 63 (1980)). The Court also looks to see if “the court’s ruling . . . is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

### III. Argument

This Court has repeatedly held “[t]he termination of parental rights statutes provide for a two-stage termination proceeding: an adjudication stage and a disposition stage.” *In re D.H.*, 232 N.C. App. 217, 219, 753 S.E.2d 732, 734 (2014). Here, Mother makes no argument concerning the adjudicatory phase, in which the trial court here concluded that sufficient grounds existed to terminate her parental rights. Rather, Mother challenges the dispositional phase, arguing that the trial court erred in determining that it was in the children’s best interest to terminate her rights.

When determining the best interests of the child or children, the court looks to several factors:

- (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) (2017).

In this appeal, Mother puts forth two issues, which we address in turn below.

1. Juvenile Adoption Consent

First, Mother argues that the trial court erred by failing to make any finding concerning the likelihood that the older children would consent to an adoption, contending that such a finding was required to satisfy Section 7B-1110(a)(2). Indeed, in our adoption statutes, in certain situations, an adoption order *may* require the consent of the juvenile where the juvenile is over twelve (12) years of age. *See* N.C. Gen. Stat. § 48-3-603(b) (2017). Mother contends that the trial court was therefore required, when considering whether to terminate parental rights, to determine whether her older children's consent would be required for a future adoption and, if so, whether they would likely consent. We disagree. This matter before the trial court was not an adoption under Chapter 48, but rather a termination of parental rights proceeding under Chapter 7B. We conclude that an order terminating the rights of a parent to an older child in a Chapter 7B proceeding is not void simply because the trial court fails to make findings concerning the likelihood that the older child will consent to adoption in the future. And we conclude that the trial court's findings in this Chapter 7B proceeding were otherwise sufficient.

Indeed, there was more than enough evidence to show that even if the two

children objected to the adoption plan, those concerns would be addressed at the adoption hearing under Chapter 48. The children's behavior improved and their performance in school increased dramatically upon being placed with the foster mother. Further, the trial court also made several findings in support of its decision to terminate parental rights and in furtherance of the adoption plan. Findings of fact 53 and 13 from the order address the foster mother's willingness to adopt all three children and the rarity of that situation. Those findings also discuss that the foster home is equipped to deal with the children's psychological, intellectual, and behavioral issues. Neither of these findings were challenged at the trial court level and so are binding on appeal. *See In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007).

## 2. Placement of Juveniles

In her second argument, Mother contends that the children should have been placed permanently with their maternal grandmother, rather than with the foster mother. However, the trial court made a number of unchallenged findings that the grandmother had been unreliable and untruthful to DSS during the process. Early on, grandmother admitted knowing about the father's substance abuse around the children to a DSS employee. However, she retracted that admittance later when she stated that she had no idea such activity was taking place, though both Mother and the father admitted to a DSS employee that the grandmother knew of the drug usage

in the presence of the children. Further, Mother lived in the grandmother's house at the time of the hearing; and grandmother claimed that she would make the Mother move out if given custody of the children. However, she later stated that she never intended to make her daughter move out. Additionally, there was evidence that the grandfather had dementia, something the grandmother attempted to hide, and that the children performed better when living with the foster mother.

Based on the findings, we conclude that the trial court did not abuse its discretion in deciding to place the children with the foster mother. As noted by the *guardian ad litem*: “[t]he foster placement is the only stable environment that the children can call home. They are well taken care of by their foster mom . . . [who] attends to all their needs.” The children are all of the age where regularly attending school and receiving extra help for their learning disabilities are crucial to their intellectual development.

The foster mother has already expressed her desire to adopt all three children, and the parent plan is furthered by the placement. The children also have a respectful and caring relationship with their foster mother, and all three children are improving and benefiting from her influence. Even though the children have a bond with their grandmother, we cannot say that the trial court's decision constituted an abuse of discretion.

#### IV. Conclusion

IN RE A.L.M.

*Opinion of the Court*

We conclude that the trial court did not abuse its discretion in terminating Mother's parental rights and placing the children with the foster mother.

AFFIRMED.

Judges TYSON and BROOK concur.

Report per Rule 30(e).