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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-41

Filed: 1 October 2019

Iredell County, No. 11 JT 30

IN THE MATTER OF A.L.L.

Appeal by Respondent-Mother from an Order entered 8 October 2018 by Judge Christine Underwood in Iredell County District Court. Heard in the Court of Appeals 19 September 2019.

*Lauren Vaughan for petitioner-appellee Iredell County Department of Social Services.*

*Womble Bond Dickinson (US) LLP, by John E. Pueschel, John F. Morrow, and Erin H. Epley, for guardian ad litem.*

*Peter Wood for respondent-appellant mother.*

HAMPSON, Judge.

**Factual and Procedural Background**

IN RE A.L.L.

*Opinion of the Court*

Respondent-Mother (Respondent)<sup>1</sup> appeals from an Amended Consolidated Judgment & Order Adjudication and Disposition in Termination of Parental Rights Proceeding (Termination Order) terminating her parental rights to her child. The relevant facts and procedural history are as follows:

Respondent has a lengthy history with Iredell County Department of Social Services (DSS); she has either relinquished or lost parental rights to her five other children. Respondent's minor child, Arthur,<sup>2</sup> was born on 8 August 2007. DSS became involved on 17 February 2011, after receiving a report that two days prior, on 15 February 2011, a man was found stabbed to death inside Respondent's apartment, where Arthur, then three years old, resided. The same day, DSS filed a Juvenile Court Petition alleging neglect and dependency of Arthur. Respondent was charged with second-degree murder and Arthur was placed with his aunt and uncle while Respondent was incarcerated awaiting trial. On 8 November 2013, Respondent was found guilty of second-degree murder; she is currently incarcerated. Her expected release date is in April 2024, at which time Arthur will be three months shy of seventeen.

On 23 March 2011, Arthur was adjudicated dependent. From 9 November 2011 to 13 December 2016, guardianship was granted to his aunt and uncle. At that

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<sup>1</sup> The Termination Order terminated the parental rights of the minor child's legal and biological fathers, respectively. However, neither individual appealed termination. Thus, all references to Respondent are Respondent-Mother.

<sup>2</sup> A pseudonym is used to protect the identity of the child.

time, the permanency plan for Arthur was guardianship with a relative or court-approved caretaker. While living with his aunt and uncle, Arthur began attending school and was reported to make progress and enjoy learning. Beginning in March 2015, Arthur started to exhibit aggressive behavior, resulting in his hospitalization several times through December 2016. At that time, Arthur was diagnosed with post-traumatic stress disorder (PTSD) and attention-deficit/hyperactivity disorder (ADHD). As a result, in December 2016, the guardians petitioned the trial court to dissolve legal guardianship. On 13 December 2016, the trial court dissolved guardianship.

Since 13 December 2016, Arthur has been in the custody of DSS and has lived in several different foster homes. Arthur's primary care plan was amended, with the primary goal changing to termination of parental rights (TPR)/adoption and a secondary plan of guardianship with a relative. After leaving the children's hospital in January 2017, Arthur was placed in the Barium Springs Home for Children. There, his guardian *ad litem* reported on 14 February 2017 that he "put[] a lot of effort in learning[,]” was "learning the rules and is striving to obey them[,]” and "report[ed] no real issues with his behavior.” Due to his progress, Arthur was moved to an Intensive Alternative Family Treatment (IATF) foster home in February 2017.

In August 2017, Arthur began a day treatment program. There, he received medication management and was attending therapy weekly with Children's Hope

Alliance. Despite that, Arthur's behavior regressed. He was suspended from school on multiple occasions in the fall of 2017. On 9 January 2018, Arthur was hospitalized following an incident in the foster home and his family requested an immediate move.

On 22 January 2018, Arthur was placed in Hampton Psychiatric Residential Treatment Facility. There, Arthur received more individualized care and began regular appointments with a therapist. He initially resisted opening up, however, "[i]n mid-July [2018], [he] reported to his therapist that he had decided that he wanted out of the facility and was going to make every effort to work towards his goal." Since then, his behavior, as noted by his therapist, was not perfect but was notably less aggressive. His therapist recommended a step down from his current placement. His therapist further recommended that he cease contact with Respondent, noting his behavior worsens for weeks after any form of communication with her and noting Arthur has requested not to receive her letters.

After a termination hearing on 22 August 2018, the trial court entered a Termination Order on 8 October 2018 severing Respondent's parental rights. The trial court concluded: "The entry of an order terminating parental rights will not result in an unnecessary severance of the relationship between the Minor Child and the Respondent Parents and termination of parental rights and adoption is in the best interests of the Minor Child." Respondent appeals from this Order.

**Issue**

Respondent asserts that the trial court abused its discretion by terminating her parental rights against the best interests of the minor child.

### Analysis

#### I. Standard of Review

A finding that termination of parental rights is in the best interests of the child is reviewed for abuse of discretion. *In re Shepard*, 162 N.C. App. 215, 222, 591 S.E.2d 1, 6 (2004). Under this standard, we reverse the trial court’s decision “only where it is manifestly unsupported by reason.” *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013) (citation and quotation marks omitted).

#### II. The Best Interests of the Minor Child

The trial court found grounds to terminate Respondent’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(1),(6) and analyzed the best interests of Arthur according to N.C. Gen. Stat. § 7B-1110. N.C. Gen. Stat. §§ 7B-1111(a)(1),(6); 7B-1110 (2017).<sup>3</sup> Respondent appeals the trial court’s determination that termination was in the best interests of her minor child, contending that Arthur is unadoptable.

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<sup>3</sup> We note that under N.C. Gen. Stat. § 7B-1110(a), the trial court is required to enter a written order terminating parental rights within thirty days of the termination hearing. N.C. Gen. Stat. § 7B-1110(a) (2017). Here, the termination hearing was held on 22 August 2018. The Termination Order was not entered until 8 October 2018. Although this is not within the thirty-day requirement of Section 7B-1110, the issue was not raised by Respondent, and, moreover, the proper remedy is for the party to file a request for mandamus. *In re T.H.T.*, 362 N.C. 446, 455, 665 S.E.2d 54, 60 (2008) (“In child welfare cases in which a trial court fails to timely enter an order, mandamus is not only appropriate, but is the superior remedy.”).

Reviewing the trial court's best interests determination for abuse of discretion, we affirm.

When determining whether termination of parental rights is in the best interests of the child, N.C. Gen. Stat. § 7B-1110(a) requires the trial court consider:

- (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). “[T]he language of [N.C. Gen. Stat. § 7B-1110(a)] requires the trial court to consider all six of the listed factors[;]” however, “the court must enter written findings in its order concerning *only those factors that are relevant.*” *In re D.H.*, 232 N.C. App. 217, 220-21, 753 S.E.2d 732, 735 (2014) (emphasis added) (citations and quotation marks omitted).

At the termination hearing, the trial court considered evidence on all factors, including: Arthur's age—both current and at the time of Respondent's release; his likelihood of adoption despite his behavioral and mental health concerns; whether termination will assist in accomplishing his permanent plan; his bond with

*Opinion of the Court*

Respondent; and the quality of his relationship with his proposed permanent placement. In the Termination Order, the trial court made findings, including that although Arthur does not currently have a potential adoptive placement, there is a likelihood that he could be adopted, and moreover, that without termination, Arthur will remain in foster care for at least five more years, contrary to his best interests and wishes.

Respondent's argument on appeal contends that the termination was against Arthur's best interests because he is unadoptable. However, we decline to hold the trial court's determination is manifestly unsupported by reason and note that "a finding [of adoptability] is not required in order to terminate parental rights." *In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983). Moreover, it is within the trial court's discretion to weigh the six factors as it sees fit. *See In re C.L.C., K.T.R., A.M.R., E.A.R.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709 (2005) (stating that the trial court was "entitled to give greater weight to other facts that it found" when it affirmed the trial court's termination of parental rights).

Respondent relies primarily on *In re J.A.O.* in support of her argument. 166 N.C. App. 222, 601 S.E.2d 226 (2004). However, the facts in the case *sub judice* differ. In *J.A.O.*, this Court reversed the trial court's termination of parental rights based on the best interests of the child. *Id.* at 228, 601 S.E.2d at 230. In *J.A.O.*, the child was sixteen and had significant physical and mental conditions that acted as a barrier

*Opinion of the Court*

to adoption.<sup>4</sup> *Id.* at 223, 228, 601 S.E.2d at 227, 230. His guardian *ad litem* did not see adoption as something that was in his best interests and recommended against termination of parental rights. *Id.* at 225, 601 S.E.2d at 229. Despite that, the trial court terminated parental rights. *Id.* at 223, 601 S.E.2d at 227. On appeal, this Court was “unconvinced that the remote chance of adoption in this case justifies the momentous step of terminating respondent’s parental rights.” *Id.* at 228, 601 S.E.2d at 230. “[A]fter balancing the minimal possibilities of adoptive placement against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring,” this Court reversed the termination, holding that the trial court abused its discretion. *Id.* (citation and quotation marks omitted).

Here, although Arthur did not have an immediate potential adoptive placement, the trial court concluded “he is a likeable child” and the “likelihood of his adoption will improve as his level of placement decreases[,]” of which he had already been approved for a level down. Further, the trial court found that termination will assist in achieving Arthur’s primary plan because it allows DSS to seek adoptive placement with agencies and on adoption websites, an option currently unavailable to DSS. We also note that Arthur does not share the same mental and physical

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<sup>4</sup> The minor child in *J.A.O.* had been diagnosed with “bipolar disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, borderline intellectual functioning, non-insulin dependent diabetes mellitus, and hypertension.” *Id.* at 228, 601 S.E.2d at 230.



impediments as the minor child in *J.A.O.*<sup>5</sup> Unlike in *J.A.O.*, Arthur's guardian *ad litem* recommended termination of parental rights; his social worker and guardian *ad litem* both testified at trial that adoption was possible and in his best interests.

This Court, in *J.A.O.*, cited to the “stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring” when it reversed termination. 166 N.C. App. at 228, 601 S.E.2d at 230. However, in the case before us, continuing a legal relationship would further delay Arthur a sense of permanence and stability. “[I]n almost all cases, delay is directly contrary to the best interests of children, which is the ‘polar star’ of the North Carolina Juvenile Code.” *T.H.T.*, 362 N.C. at 450, 665 S.E.2d at 57. The trial court found “[t]hough Respondent Mother loves her son, not terminating her parental rights would, in light of her incarceration, create a situation where the Minor Child spends the next five-plus years in foster care, which is not in his best interests.” As Arthur's therapist stated: “He should not have to wait to feel safe and for the opportunity to move forward in his life.” In light of the foregoing, we hold the trial court did not abuse its discretion when it concluded that termination of Respondent's parental rights was in Arthur's best interests.

### **Conclusion**

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<sup>5</sup> At the time of the hearing, Arthur was diagnosed with ADHD, PTSD, and bipolar disorder.

IN RE A.L.L.

*Opinion of the Court*

Accordingly, based on the foregoing reasons, we affirm the trial court's determination that termination of Respondent's parental rights was in the best interests of her minor child.

AFFIRMED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).