IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-849

Filed 18 July 2023

Watauga County, No. 19 JT 53

IN THE MATTER OF: D.W.

Appeal by Respondent-Mother from order entered 28 July 2022 by Judge Hal G. Harrison in Watauga County District Court. Heard in the Court of Appeals 13 July 2023.

Chelsea Bell Garrett for petitioner-appellee Watauga County Department of Social Services.

Q Byrd Law, by Quintin D. Byrd, for appellee guardian ad litem.

J. Thomas Diepenbrock for respondent-appellant mother.

FLOOD, Judge.

Respondent-Mother appeals a trial court order terminating her parental rights to her minor child and ordering that visitation cease.[1] We affirm the trial court's order.

I. Background

[1] The parental rights of Denzel's father were terminated in a separate proceeding.

D.W. ("Denzel")[2] was born in 2013. Respondent-Mother adopted Denzel and is his biological maternal grandmother. Watauga County Department of Social Services ("DSS") filed a juvenile petition on 31 December 2019 alleging Denzel was a neglected and dependent juvenile. In support of the petition, DSS alleged that on the evening of 23 December 2019, Watauga County Sheriff's deputies conducted a search for Denzel after Respondent-Mother and neighbors were unable to locate him after 9:00 p.m. Denzel was found an hour later "balled up" in a ditch. DSS had been involved with the family in April 2019 due to Denzel's running away and had put a safety plan in place to provide for supervision of Denzel at all times.

On 27 December 2019, DSS met with Denzel, Respondent-Mother, and Respondent-Mother's parents. Respondent-Mother stated that Denzel had extreme behaviors—he had threatened to kill her multiple times, and he had abused animals. She had done all that she could do, but Denzel continued to act the same way. Despite DSS's attempts to provide appropriate safety resources, the family repeatedly stated that they had no one who could care for Denzel. DSS also learned that Denzel had witnessed domestic violence occur in the home. The trial court granted DSS nonsecure custody of Denzel by order entered on 31 December 2019.

DSS's petition was heard in the trial court on 30 January 2020. Respondent-Mother stipulated to the facts alleged by DSS and agreed with an adjudication that

[2] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C.R. App. P. 42.

Denzel was a neglected juvenile. The trial court adjudicated Denzel a neglected juvenile by order entered 10 June 2020. In its disposition, the trial court found that Respondent-Mother had entered into a case plan with DSS, DSS retained custody of Denzel, and Respondent-Mother was awarded a minimum of one hour of supervised visitation per week. The court set the primary permanency plan as reunification.

The trial court conducted a review hearing on 11 June 2020. In an order entered 13 August 2020, the trial court found that Respondent-Mother "did not make progress for the initial several months of this case but has recently reengaged . . . ." The permanency plan remained reunification.

Following a permanency planning review hearing held on 13 August 2020, the trial court, by order entered on 30 November 2020, authorized DSS to expand visitation between Denzel and Respondent-Mother, "including, without limitation, to provide unsupervised and/or longer visits."

Following a permanency planning review hearing held on 14 December 2020, the trial court made no change to the permanent plan or Respondent-Mother's visitation. Subsequently, following a permanency planning review hearing held on 21 January 2021, the trial court found, in an order entered on 10 March 2021, that Respondent-Mother had not made significant progress in her case plan. The trial court continued the permanent plan of reunification and acknowledged a concurrent plan of guardianship. The trial court ordered Respondent-Mother "to demonstrate significant and measurable progress and to document any and all efforts made toward

the plan of reunification. Failing that, the [c]ourt will order that the Plan be change[d] and that a TPR be filed." Respondent-Mother's visitation was not altered.

Following a permanency planning hearing conducted on 25 March 2021, the trial court entered an order on 28 September 2021 which included the following findings of fact:

> [Denzel] has been in the custody of DSS for 15 months. . . .
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> [Respondent-Mother] has been unable or unwilling to establish a reliable visitation schedule, be that in person or by phone.
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> [Denzel] does suffer from periods of defiance and has periods of extreme discontent.
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> [Respondent-Mother]'s unwillingness or inability to visit [Denzel] on a regular schedule, despite even offers of DSS to transport her, is causing [Denzel] extreme unhappiness.
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> [Denzel] has expressed great displeasure when visits have not occurred after being scheduled.
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> Currently, [Respondent-Mother] is entitled to twice-a-week phone visitation, with [Denzel] expecting the phone calls to occur at a designated time; and at least fifty percent (50%) of the time the call does not occur, leaving [Denzel] to, on one occasion, state [sic]: "I pray I never get visits anymore because they always get cancelled."
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> . . . .
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> DSS has worked extensively to explain the significance of her failed visits and inability to work on the rest of her case plan on [Denzel] and the prospects of Reunification. In fact, DSS has recently scheduled four appointments for the purpose of trying to engage in such an exchange with [Respondent-Mother], and she has not shown.

> [Denzel] cries out for more individual attention and is in need of an individual placement. Although it is true that [Denzel] suffers from defiance and other emotional issues, DSS feels strongly that there is a potential adoptive placement findable [sic] for a Juvenile of this age with both [Denzel's] strengths and weaknesses, and DSS has indicated that [it] is aggressively pursuing such placement.
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> Further troubling with regard to [Respondent-Mother]'s actions is that at the January 21, 2021 session, [the presiding judge] verbally advised [Respondent-Mother] in open court that it was not changing the permanency plan but that, she was instructed to demonstrate[] significant and measurable progress and to document any and all efforts toward the plan of Reunification, and that failing that, the [c]ourt will order that the plan be changed and that a TPR be filed.
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> Despite that admonition and despite at least the slightly lessening impact of the pandemic, the [Respondent-Mother] has in no way demonstrated that she received the message, nor has she taken any steps to demonstrate any improvement in her efforts, but to the contrary, if anything her performance has worsened.

The trial court changed the primary permanent plan to adoption with a concurrent plan of guardianship. Visitation was suspended.

The permanent plan of adoption with a concurrent plan of guardianship and the suspension of Respondent-Mother's visitation rights remained unchanged following permanency planning review hearings held on 29 June 2021 and 20 January 2022, as reflected in orders entered 13 October 2021 and 1 February 2022. In the permanency planning review order entered 1 February 2022, the court noted that Respondent-Mother's visitation award had been suspended in March 2021, and

"one last visit was ordered. There have been numerous attempts to have that visit but it has not taken place . . . ."

DSS filed a Motion for Termination of Parental Rights on 4 January 2022. The motion alleged grounds existed for termination of parental rights based on neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2021); willfully leaving the juvenile in foster care or placement outside the home for more than twelve months without showing reasonable progress had been made in correcting those conditions which led to the removal of the juvenile, pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) (2021); and dependency, pursuant to N.C. Gen. Stat. § 7B-1111(a)(6) (2021).

The trial court conducted a permanency planning hearing on 3 February 2022 and entered a permanency planning order on 2 May 2022. The court noted that Respondent-Mother had acknowledged her shortcoming with respect to her family services agreement, and that she had asked Denzel in January of that year, "can you forgive me?" Following that, DSS had observed a big difference in Denzel's attitude: "he [wa]s no longer self-loathing and self-blaming." The primary permanent plan remained adoption with a concurrent plan of guardianship, but the trial court allowed DSS to permit monthly visits if Denzel's therapist confirmed that it would not be detrimental to him.

A termination of parental rights hearing was conducted on 26 May 2022, and on 28 July 2022, the trial court entered its Order on Termination of Parental Rights.

Based on clear, cogent, and convincing evidence, the trial court adjudicated grounds to support the termination of Respondent-Mother's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), and (6). In its disposition, the trial court found that "[t]he best interests of [Denzel] would be served by terminating the parental rights of Respondent-Mother . . . ." The trial court terminated Respondent-Mother's parental rights in Denzel and further decreed that "[t]here shall be no further visitation with Respondent Mother." Respondent-Mother appeals.

II. Issues

On appeal, Respondent-Mother challenges: (A) the trial court's determination that termination of parental rights was in Denzel's best interests; and (B) the trial court's decree that there shall be no further visitation between her and Denzel.

A. Best Interests Determination

A termination of parental rights proceeding involves a two-stage process consisting of an adjudicatory stage and a dispositional stage. N.C. Gen. Stat. §§ 7B-1109 -1110 (2021); *In re N.D.A.*, 373 N.C. 71, 833 S.E.2d 768 (2019). If the trial court adjudicates the existence of one or more grounds for termination of parental rights, "the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re N.B.*, 377 N.C. 349, 353, 856 S.E.2d 828, 834 (2021) (quoting *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016)); N.C. Gen. Stat. § 7B-1110). In making its determination,

> [t]he court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:
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> (1) The age of the juvenile.
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> (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.
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> (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) (2021).

"Although the trial court must consider each of the factors in N.C.G.S. § 7B-1110(a), written findings of fact are required only 'if there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the [trial] court[.]'" *In re S.M.*, 375 N.C. 673, 691, 850 S.E.2d 292, 306 (2020) (quoting *In re J.S.*, 374 N.C. 811, 822, 845 S.E.2d 66, 75 (2020) (alterations in original)) (quotation marks omitted). Unchallenged findings of fact are binding on appeal. *In re K.N.L.P.*, 380 N.C. 756, 759, 869 S.E.2d 643, 646 (2022).

"We review a trial court's assessment of a juvenile's best interests only for abuse of discretion." *In re N.C.E.*, 379 N.C. 283, 287, 864 S.E.2d 293, 297 (2021)

(citing *In re A.R.A.*, 373 N.C. 190, 199, 835 S.E.2d 417, 423 (2019)). "Under that standard, we defer to the trial court's decision unless it is 'manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.'" *In re C.V.D.C.*, 374 N.C. 525, 529, 843 S.E.2d 202, 205 (2020) (quoting *Briley v. Farabow*, 348 N.C. 537, 547, 501 S.E.2d 649, 656 (1998)).

Respondent-Mother argues the trial court erred by concluding that termination of her parental rights was in Denzel's best interests where the court failed to adequately consider and make appropriate written findings of fact in accordance with N.C. Gen. Stat. § 7B-1110(a). Respondent-Mother specifically challenges the trial court's failure to make a finding of fact regarding her bond with Denzel, pursuant to N.C. Gen. Stat. § 7B-1110(a)(4), as reversible error. We disagree.

In its 28 July 2022 termination of parental rights order, the trial court made the following finding of fact:

> The best interest of [Denzel] would be served by terminating the parental rights of Respondent Mother in order to achieve the permanency plan of Adoption for [Denzel]. The Guardian Ad Litem is in agreement that adoption is in the best interest of [Denzel], and thus agrees that it is in [Denzel's] best interest to terminate the parent rights of Respondent Mother. [Denzel] has had visits with a potential adoptive placement for him . . . and the visits have gone very well. They appear to bond over sports and have fun together. [Denzel's] behaviors are not improving in foster care and, while *he appears to love Respondent Mother*, the inconsistency and instability has not been overcome. [Denzel's] age is such that he is adoptable, but the longer we wait and he is in foster care, the greater risk he will have trouble bonding and with behaviors. We have

> the opportunity with [the potential adoptive placement] as a possible adoptive placement to prevent that from happening. Termination is the only barrier to permanency for [Denzel] at this time.

(emphasis added). Acknowledging the finding that "while [the juvenile] appears to love [Respondent-Mother], the inconsistency and instability has not been overcome," Respondent-Mother argues that "[s]uch a cursory statement does not demonstrate that the trial court adequately considered the very relevant criterion of Denzel's bond with [Respondent-Mother]."

Respondent-Mother did not attend the hearing on the termination of her parental rights, and the court heard testimony only from Denzel's DSS social worker and his guardian ad litem ("GAL"). During the adjudication stage of the hearing, the court heard uncontested testimony from the social worker that DSS's biggest concern about the interactions between Respondent-Mother and Denzel was Respondent-Mother's inconsistency in attending scheduled visits or making scheduled phone calls: "the meetings were okay if she made it, but the inconsistency was very disruptive, very upsetting to him when he was expecting a visit and she didn't show up." *See In re E.F.*, 375 N.C. 88, 93–94, 846 S.E.2d 630, 634 (2020) ("[T]he trial court may—and should—consider evidence introduced during the adjudicatory stage of a termination hearing in determining the children's best interests during the disposition stage."). During the disposition stage, the court heard uncontested testimony from the social worker that

> [Denzel] has expressed frustration. . . . He's indicated to me that he didn't feel that she was making much effort to get to see him. So he was saddened by that.
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> . . . .
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> [But] [h]e would like to have contact with [her]. If he can't live with her, he would like her in his life . . . ."

The record of the termination proceeding does not present any conflicting evidence on the bond between Denzel and Respondent-Mother. As such, the factor under N.C. Gen. Stat. § 7B-1110(a)(4) was not at issue, and the trial court was not required to make a written finding of fact. *See In re S.M.*, 375 N.C. at 691, 850 S.E.2d at 306. We conclude the trial court's finding that "he appears to love [Respondent-Mother]" but has not overcome the "inconsistency and instability" in her visits, is sufficient to show the court's consideration of the bond between Denzel and Respondent-Mother in accordance with the statutory mandate of N.C. Gen. Stat. § 7B-1110(a)(4).

Respondent-Mother does not contend that conflicting evidence before the trial court put other factors under N.C. Gen. Stat. § 7B-1110(a) at issue requiring written findings of fact. Therefore, our review of the Record shows that the trial court did not abuse its discretion by concluding that terminating Respondent-Mother's parental rights was in Denzel's best interests. *See In re S.M.*, 375 N.C. at 691, 850 S.E.2d at 306.

B. Post-Termination Visitation

Respondent-Mother also argues that the trial court abused its discretion by ordering "[t]here shall be no further visitation with [Respondent-Mother]." We disagree.

Respondent-Mother points out that in its 2 May 2022 permanency planning order, the trial court found that after "acknowledg[ing] her shortcomings in respect to her family services agreement [and] . . . ask[ing] the Juvenile 'can you forgive me?' DSS observed that made a big difference in his attitude and how he felt about himself; he [wa]s no longer self-loathing and self-blaming." The court further found that "due to this recent positive change, the [c]ourt will allow some visitation of a duration and a type to be determined by DSS. If the Juvenile's therapist confirms such visitation would not be detrimental to the Juvenile." During the termination hearing, the DSS social worker testified that Denzel was able to visit with Respondent-Mother once. "The visit went well. She – again was able to apologize to him for her failures, which has actually been therapeutic to him."

The social worker testified that Denzel expressed an interest in continued contact with Respondent-Mother: "If he can't live with her, he would like her in his life as his grandmother." The social worker also testified that the issue of continued contact between Denzel and Respondent-Mother had been discussed with Denzel's potential adoptive placement, who indicated that if Respondent-Mother was "consistent and can be appropriate, she's more than happy to have him in his life as

grandmother."

"An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship[.]" N.C. Gen. Stat. § 7B-1112 (2021); *see generally Huml v. Huml*, 264 N.C. App. 376, 398, 826 S.E.2d 532, 547 (2019) ("Termination of parental rights makes a child available for adoption by another person, rendering the child a legal stranger to the biological parent." (citing *In re Estate of Edwards*, 316 N.C. 698, 706, 343 S.E.2d 913, 918 (1986))); *see, e.g.*, *Gorsuch v. Dees*, 173 N.C. App. 223, 226, 618 S.E.2d 747, 750 (2005) (holding the respondent-father's "rights and responsibilities as a biological, putative, or any other category of [parent] ceased upon the termination of his parental rights"). Moreover, "the trial court may enforce the order" terminating parental rights during the pendency of an appeal of the order. N.C. Gen. Stat. § 7B-1003(a) (2021).

Following the trial court's termination of Respondent-Mother's parental rights, which we uphold, Respondent-Mother had no protected right to visitation with Denzel. *See* N.C. Gen. Stat. §§ 7B-1003(a) and 1112.

In its findings of fact, the trial court observed that

> [Denzel's] behaviors are not improving in foster care and, while he appears to love Respondent Mother, the inconsistency and instability has not been overcome. [Denzel's] age is such that he is adoptable, but the longer we wait and he is in foster care, the greater risk he will have trouble bonding and with behaviors. We have the

> opportunity with [the potential adoptive placement] as a possible adoptive placement to prevent that from happening.

The trial court's observations regarding the juvenile's behavior and trouble bonding are unchallenged. *See In re K.N.L.P.*, 380 N.C. at 759, 869 S.E.2d at 646.

The trial court's decree to cease visitation between Respondent-Mother and Denzel avoids the inconsistency and instability he experienced during Respondent-Mother's visitations. The trial court's findings suggest that its purpose is to further Denzel's ability to improve his behavior and bond with a potential adoptive parent. Therefore, the decree is not "manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *See In re C.V.D.C.*, 374 N.C. at 529, 843 S.E.2d at 205 (quoting *Briley*, 348 N.C. at 547, 501 S.E.2d at 656). Accordingly, we defer to the trial court's decision and overrule Respondent-Mother's argument. *See id* at 529, 843 S.E.2d at 205; *In re E.S.*, 378 N.C. at 12, 859 S.E.2d at 188.

III. Conclusion

For the reasons stated above, we hold the trial court did not abuse its discretion when it determined it was in the minor child's best interests to terminate Respondent-Mother's rights and that there shall be no further required visitation between the minor child and Respondent-Mother.

We therefore affirm the trial court's 28 July 2022 order terminating

Respondent-Mother's parental rights.

AFFIRMED.

Judges TYSON and RIGGS concur.

Report per Rule 30(e).