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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-124

Filed 3 October 2023

Surry County, No. 21 JT 2-5

IN THE MATTER OF: S.A.R., W.A.R., N.W.N., E.A.N.

Appeal by Respondent-Mother and Respondent-Father from Disposition Orders entered 19 October 2022 by Judge Marion Boone in Surry County District Court. Heard in the Court of Appeals 6 September 2023.

*Partin and Cheek, by R. Blake Cheek, Esq., for Petitioner-Appellee Surry County Department of Social Services.*

*Emily Sutton Dezio, for Respondent-Appellant-Mother.*

*Mary McCullers Reece, for Respondent-Appellant-Father.*

*James N. Freeman, Jr., for Guardian ad Litem.*

CARPENTER, Judge.

Respondent-Mother and Respondent-Father appeal from disposition orders entered 19 October 2022 terminating their parental rights to their minor children

E.A.N. (“Ethan”) and N.W.N. (“Nolan”).<sup>1</sup> S.A.R. (“Sadie”) and W.A.R. (“Wyatt”) are Ethan’s and Nolan’s stepsiblings and not implicated in this appeal. After careful review, we affirm the disposition orders.

### **I. Factual and Procedural Background**

Until January 2021, Respondent-Mother and her then-husband (“Stepfather”)<sup>2</sup> had *de facto* custody of her four children: three-year-old Ethan, two-year-old Nolan, five-month-old Sadie, and five-month-old Wyatt. Sadie and Wyatt are Stepfather’s biological children, while Ethan and Nolan are Respondent-Father’s biological children.

Record evidence tended to show the following: On 4 January 2021, Surry County Department of Social Services (“SCDSS”) received reports that Ethan and Nolan exhibited severe bruising and burns. All four children were examined at the hospital and tested positive for methamphetamines. Furthermore, Ethan and Nolan showed symptoms consistent with torture, including bites, burns, and bruises on their bodies. On one occasion, Ethan witnessed Stepfather hold Nolan down, light a torch, and burn Nolan’s testicles and foot. Respondent-Mother refused to seek help or treatment for their injuries; instead, she defended Stepfather as “a good father and influence on Ethan and Nolan.” Upon the children’s release from the hospital, SCDSS

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<sup>1</sup> In accordance with N.C. R. App. P. 42(b), pseudonyms have been used to protect the identities of the minor children.

<sup>2</sup> Stepfather is not a party to this appeal.

*Opinion of the Court*

sought and received an order for nonsecure custody. The trial court found all children were exposed to a substantial risk of physical injury or sexual abuse, and Ethan and Nolan also suffered physical injury, sexual abuse, or serious emotional damage.

On 1 April 2021, the trial court adjudicated Sadie and Wyatt as neglected, and Ethan and Nolan as abused and neglected. On 17 February 2021, Sadie and Wyatt were placed with a licensed foster family in Stokes County (the “Foster Parents”). Meanwhile, Ethan and Nolan were temporarily placed with various relatives. Respondent-Father was not considered as an appropriate placement because of his: history of domestic violence with Respondent-Mother, for which he was convicted of battery of an unborn child; incarceration at the time the children were ordered into nonsecure custody; sporadic incarcerations; and failure to complete his case plan.

Following investigations of Ethan and Nolan’s injuries, law enforcement arrested Stepfather and charged him with misdemeanor child abuse; the trial court ordered he have no further contact with Ethan and Nolan. On 14 January 2021, Respondent-Mother and Respondent-Father entered into separate case plans with SCDSS but failed to complete them. Neither Respondent-Mother nor Respondent-Father completed the recommended substance abuse program, exercised visitation, paid any support for the children, or sent any cards to the children. On 19 July 2021, the trial court entered an order relieving SCDSS of reunification efforts with Respondent-Mother.

Ethan and Nolan moved from placement to placement, whereas Sadie and

*Opinion of the Court*

Wyatt remained with the Foster Parents. Ethan and Nolan would visit Sadie and Wyatt at the Foster Parents' home and formed a relationship with the Foster Parents. On 9 February 2022, SCDSS filed petitions to terminate Respondent-Mother's, Respondent-Father's, and Stepfather's parental rights. On 17 February 2022, the trial court entered an order changing Respondent-Father's primary plan regarding Ethan and Nolan to termination with a secondary plan of reunification.

Approximately two weeks before the termination hearing, Ethan and Nolan moved in with Sadie, Wyatt, and the Foster Parents. At that time, the Foster Parents informed SCDSS they were willing to adopt all four children.

On 12 August 2022, the trial court conducted the termination of parental rights hearing and entered adjudication orders and disposition orders on 19 October 2022. The trial court concluded that grounds existed to support the termination of all parental rights for all four children. During the dispositional hearing, the trial court concluded termination of parental rights would be in the children's best interests based on the following findings of fact, in relevant part:

(9) [Ethan and Nolan] have resided with the [F]oster [P]arents since [25 July 2022,] and the minor children have a strong familial bond with the [F]oster [P]arents.

(10) The [F]oster [P]arents are the foster parents for the juvenile's half-siblings, [Sadie and Wyatt]. [Sadie and Wyatt] have resided with the foster parents since February of 2021.

(11) Prior to [25 July 2022], the juveniles interacted with the [F]oster [P]arents during sibling visits between the

*Opinion of the Court*

juveniles and [Sadie and Wyatt]. The juveniles formed a relationship and bond with the [F]oster [P]arents during these sibling visits.

(12) The juveniles have a strong bond with [the Foster Parents] and refer to them as “mom” and “dad.”

(13) The minor children are thriving in their current placement[,] and the [F]oster [P]arents are meeting medical needs [of] the minor children . . .

(14) The [F]oster [P]arents provide a loving, nurturing, and supportive home . . .

(15) The minor children engage in activities with the [F]oster [P]arents, and they have access to age-appropriate toys . . .

(16) [Ethan and Nolan] have resided with [the Foster Parents] for less than a month, but the juveniles had a pre-existing relationship with the [F]oster [P]arents. . . .

(18) The [F]oster [P]arents have expressed their desire to keep all four of the siblings together and provide permanence for the minor children through adoption . . . .

(20) The minor children have a close bond with their siblings.

(21) The [F]oster [P]arents are able and willing to provide . . . stability for [Ethan and Nolan]. . . .

(23) There is no bond between the minor children and the Respondent-Mother . . . .

(26) There is no bond between the Respondent-Father and the minor children. . . .

(31) Terminating the parental rights of the Respondent-Mother and Respondent-Father will facilitate the timely adoption for the juveniles, as the likelihood of adoption is very high.

*Opinion of the Court*

Respondent-Mother and Respondent-Father gave timely, written notice of appeal from the disposition orders.

**II. Jurisdiction**

This Court has jurisdiction to address Respondent-Mother's and Respondent-Father's appeal pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

**III. Issues**

As neither parent challenges the trial court's adjudication that grounds existed to terminate their rights to Ethan and Nolan, the sole issue on appeal is whether the trial court abused its discretion in concluding termination of Respondent-Mother's and Respondent-Father's rights was in the best interests of Ethan and Nolan.

**IV. Analysis**

On appeal, Respondent-Mother and Respondent-Father challenge findings of fact 9, 12, 20, and 31. Ultimately, both parents assert these dispositional findings of fact lack sufficient evidentiary support because Ethan and Nolan had only been placed with the Foster Parents for eighteen days at the time of termination. Respondent-Mother and Respondent-Father further assert the trial court should have considered other less-restrictive remedies, such as guardianship, before severing the biological relationship.

**A. Standard of Review**

A termination of parental rights proceeding is a two-stage process—adjudication and disposition. “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) (2021).

"We review the trial court's dispositional findings of fact to determine whether they are supported by competent evidence." *In re C.B.*, 375 N.C. 556, 560, 850 S.E.2d 324, 328 (2020). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "[O]ur appellate courts are bound by the trial court's findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary. *In re Montgomery*, 311 N.C. 101, 110–11, 316 S.E.2d 246, 252–53 (1984).

"The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion." *In re C.B.*, 375 N.C. at 560, 850 S.E.2d at 327. "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citation omitted).

### **B. Disposition Order**

North Carolina General Statute § 7B-1110 sets forth factors the trial court must consider in engaging in a best interests analysis:

*Opinion of the Court*

In each case, the court shall consider the following criteria and make written findings regarding the following 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; and (6) any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a). “It is in the province of the trial court to weigh the relevant factors in determining [the child’s] best interests.” *In re J.C.L.*, 374 N.C. 772, 787, 845 S.E.2d 44, 56 (2020). The trial court “is only required to make written findings regarding those factors that are relevant.” *In re C.J.C.*, 374 N.C. 42, 48, 839 S.E.2d 742, 747 (2020).

As an initial matter, Respondent-Mother challenges the sufficiency of the evidence supporting findings of fact 9 and 12, which state in part: “[Ethan and Nolan] have a strong familial bond with the [F]oster [P]arents” and “[Ethan and Nolan] have a strong bond with [the Foster Parents] and refer to them as ‘mom’ and ‘dad.’” Specifically, Respondent-Mother argues there could not be a strong bond after only eighteen days. We disagree.

On its face, eighteen days is not a substantial amount of time to develop a “strong bond” between a prospective parent and child. Upon closer inspection, however, substantial evidence shows the trial court correctly assessed the quality of the bond among Ethan, Nolan, and the Foster Parents. Unchallenged findings of fact



*Opinion of the Court*

13, 14, 15, and 16 tend to show Ethan and Nolan: had a pre-existing relationship with the Foster Parents from prior stepsibling visits, are now thriving in a loving and supportive home, are reunited with their stepsiblings, and are engaged in age-appropriate activities with the Foster Parents. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Respondent-Mother further argues finding of fact 20, which provides Ethan and Nolan have a close bond with Sadie and Wyatt, is unsupported because Ethan and Nolan's pre-existing relationship with the Foster Parents, Sadie, and Wyatt amounted to only "a few weekend visits." We disagree. A foster care supervisor with SCDS tested that before being placed with the Foster Parents, Ethan and Nolan would regularly visit Sadie and Wyatt at the Foster Parents's home throughout their time in foster care. Moreover, the foster care supervisor testified that Ethan and Nolan were comfortable at the Foster Parents's home: "When we told [Ethan and Nolan] that they were moving to [the Foster Parents], they were extremely excited, smiling ear to ear ready to jump in the car and go immediately. They were so happy." This un rebutted evidence is indicative of a pre-existing and ongoing relationship among Ethan, Nolan, Sadie, Wyatt, and the Foster Parents months before the termination hearing.

The unchallenged findings and testimony that Ethan and Nolan were thriving in a familiar and supportive home is sufficient to support the trial court's consideration of the quality of the relationship between Ethan, Nolan, and the Foster

*Opinion of the Court*

Parents. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731; N.C. Gen. Stat. § 7B-1110(a)(5).

In addition, Respondent-Father challenges the sufficiency of the evidence for finding of fact 31, which states in part, “[t]erminating [parental rights] will facilitate [Ethan’s and Nolan’s] timely adoption, as the likelihood of adoption is very high.” Respondent-Father argues the brief duration of the placement with the Foster Parents and the trauma Ethan and Nolan experienced from the Stepfather’s abuse undermine the trial court’s findings as to the likelihood of timely adoption.

The trial court considered the likelihood of Ethan and Nolan’s adoption in unchallenged findings of fact 16, 18, 19, and 21, which tend to show: Sadie and Wyatt have been residing with the Foster Parents since 17 February 2021; Ethan and Nolan had a pre-existing relationship with the Foster Parents because they would visit Sadie and Wyatt; the Foster Parents expressed their desire to keep all four siblings together and provide permanence through adoption; and the Foster Parents are able and willing to provide the children with financial and emotional stability. Moreover, the SCDSS foster care supervisor testified the Foster Parents had been hosting Ethan and Nolan on weekends, expressed confidence they could care for all four children, and were prepared to offer the children permanence through adoption. These unchallenged findings and testimony support the trial court’s consideration of the likelihood of Ethan’s and Nolan’s adoption. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731; N.C. Gen. Stat. § 7B-1110(a)(2).

*Opinion of the Court*

The trial court considered all relevant criteria set out in North Carolina General Statute § 7B-1110(a) and made written findings for each based upon competent evidence. *See* N.C. Gen. Stat. § 7B-1110(a). Furthermore, these findings support the trial court's conclusion that termination of Respondent-Mother's and Respondent-Father's parental rights is in Ethan's and Nolan's best interests. *See In re C.B.*, 375 N.C. at 560, 850 S.E.2d at 327.

Lastly, Respondent-Mother and Respondent-Father argue the trial court should have utilized a less-restrictive remedy, such as guardianship, instead of terminating parental rights to accommodate adoption. Respondent-Father maintains he had nothing to do with Ethan's and Nolan's injuries, his scheduled release date was just seventy-nine days after the termination hearing, and guardianship would have allowed a legal avenue for the boys to know their paternal family. Respondent-Mother asserts termination was premature because there was no "sufficient permanent plan" in place.

"The fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody . . . [is] that the best interest of the child is the polar star." *In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 251.

Further, the North Carolina Supreme Court has observed:

[t]he purpose of termination of parental rights proceedings is to address circumstances where parental care fails to "promote the healthy and orderly physical and emotional well-being of the juvenile," while also recognizing "the necessity for any juvenile to have a permanent plan of care

*Opinion of the Court*

at the earliest possible age.” [N.C. Gen. Stat.] § 7B-1100. . . Thus, when there is conflict between the interests of the child and the parents, courts should consider actions that are within the child’s best interests over those of the parents. [N.C. Gen. Stat.] § 7B-1100(3).

*In re F.S.T.Y.*, 374 N.C. 532, 540, 843 S.E.2d 160, 165–66 (2020). Because of these considerations, the North Carolina Supreme Court has rejected arguments that the trial court abuses its discretion by “failing to explicitly consider non-termination-related dispositional alternatives, such as awarding custody of or guardianship over the child to the foster family, by reiterating that ‘the paramount consideration must always be the best interests of the child.’” *In re N.K.*, 375 N.C. 805, 820, 851 S.E.2d 321, 332 (2020) (quoting *In re J.J.B.*, 374 N.C. 787, 795, 845 S.E.2d 1, 6 (2020)).

The North Carolina Supreme Court recently rejected a similar argument that the trial court should have considered awarding a guardianship to the foster family instead of terminating parental rights. *In re J.C.J.*, 381 N.C. 783, 798–99, 874 S.E.2d 888, 899 (2022). In that case, the trial court made findings tending to show the respondent-parents made insufficient progress on their case plans, refused to pay a reasonable portion of the cost of the children’s care, the children had an established routine with the foster family, and the children’s needs were completely met by the foster family. *Id.* at 798, 874 S.E.2d at 899. Although the children had a bond with the biological parents, the Court held that the trial court made sufficient findings in the best interests analysis to support termination of parental rights in favor of

*Opinion of the Court*

adoption by the foster parents. *Id.* at 798–99, 874 S.E.2d at 899. In addressing the respondent-parents’ arguments that the trial court should have awarded guardianship instead, the Court held “there is no basis for the use of a least restrictive disposition test” because the “paramount consideration must always be in the best interests of the child.” *Id.* at 797–98, 874 S.E.2d at 898–99.

Here, the trial court properly considered Ethan’s and Nolan’s best interests, recognizing the necessity for Ethan and Nolan to have a permanent plan of care at the earliest possible age, alongside their siblings. Accordingly, the trial court did not abuse its discretion when ordering termination of parental rights instead of guardianship. *See* N.C. Gen. Stat. § 7B-1110(a); *In re J.C.J.*, 381 N.C. at 798–99, 874 S.E.2d at 899.

**V. Conclusion**

After careful review, we discern no abuse of discretion in the trial court’s determination that termination was in the best interests of Ethan and Nolan. We therefore affirm the Disposition Orders.

AFFIRMED.

Judges TYSON and GORE concur.

Report per Rule 30(e).