IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-453

Filed 21 November 2023

Randolph County, Nos. 20-JT-106-107

IN THE MATTER OF:

C.L.K., E.R.K.

Appeal by respondent-parents from order entered 14 February 2023 by Judge Scott C. Etheridge in Randolph County District Court. Heard in the Court of Appeals 31 October 2023.

Lauren Vaughan for Randolph County Department of Social Services, petitioner-appellee.

David A. Perez for respondent-appellant mother.

Kimberly Connor Benton for respondent-appellant father.

Robinson, Bradshaw & Hinson, P.A., by Erica M. Hicks, for Guardian ad Litem.

THOMPSON, Judge.

Respondent-mother and respondent-father appeal from the district court's 14 February 2023 order terminating their parental rights to their minor children C.L.K.

and E.R.K.[1] Respondent-mother and respondent-father assert that the district court abused its discretion in determining that it was in the best interest of E.R.K. to terminate their parental rights to him, specifically, that certain findings of fact were not supported by competent evidence. After careful review, we affirm.

I. Factual Background and Procedural History

Respondent-mother has two children from prior relationships, J.A.S. and R.L.T. R.L.T. is a special needs child, and in 2011, Randolph County DSS (DSS) received a report that respondent-father was sexually abusing R.L.T., who was six years old at the time. Unable to substantiate the allegations due to R.L.T.'s disability, the case was closed.

Respondent-mother and respondent-father had two additional children together, E.R.K. and C.L.K., born in 2015 and 2016, respectively. Between 2011 and 2020, DSS received reports on at least five occasions which chronicle a long history of suboptimal conditions for raising four young children. On 10 July 2020, DSS received a report that respondent-father had sexually assaulted J.A.S., who at the time, was thirteen years old.

In a subsequent medical evaluation, J.A.S. revealed that respondent-father, her step-father, had "been touching her breast, butt, and vagina since she was eight years old" and "since she was eleven years old [respondent-father] ha[d] forced her to

[1] Initials have been used to protect the identities of the juveniles.

perform oral sex on him numerous times and . . . had anal sex with her on numerous occasion[s]." J.A.S. claimed that she told respondent-mother about the incidents in April 2020, and that respondent-mother confronted respondent-father about the sexual abuse, which, according to DSS reports, he admitted to respondent-mother. However, respondent-mother did not contact law enforcement nor "take any other actions to protect the minor children from [respondent-father] . . . ."

In August of 2020, J.A.S., R.L.T., and E.R.K. underwent Child Medical Exams (CME) at Emmy's House Children's Advocacy Center. Pertinent to the present case, in his CME, E.R.K. reported that his half-brother R.L.T. and half-sister J.A.S. had sexually abused him by "lick[ing] his weenie and his butt" amongst other accusations including "I peed and [R.L.T.] drank it." The report also acknowledged that E.R.K. had "inappropriate sexual knowledge for a child his age that is seen with victims of child sexual abuse."

DSS requested, and was granted, nonsecure custody of the minor children through a nonsecure custody order entered on 11 August 2020. DSS maintained custody over the children through multiple nonsecure custody hearings, until the termination of parental rights hearing on 1 February 2023. By order entered 14 February 2023, the district court terminated respondent-mother and respondent-father's parental rights to the minor children C.L.K. and E.R.K.

II. Analysis

A. Standard of review

"Termination of parental rights proceedings are conducted in two stages: adjudication and disposition." *In re A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015), *disc. review denied*, 369 N.C. 182, 793 S.E.2d 695 (2016). "In the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)." *Id.* (citations omitted). "This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the findings of fact support the court's conclusions of law." *Id.*

"If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest of the child, in accordance with N.C. Gen. Stat. § 7B-1110(a)." *Id.* at 161, 768 S.E.2d at 575 (citation omitted). "The trial court's determination of the child's best interests is reviewed only for an abuse of discretion." *Id.* at 161, 768 S.E.2d at 575–76. "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." *Id.* at 161, 768 S.E.2d at 576 (citation omitted).

At the outset, we note that neither respondent-mother nor respondent-father contends that the district court abused its discretion in terminating their parental rights to the minor child, C.L.K. "Issues not presented and discussed in a party's brief

are deemed abandoned." N.C.R. App. P. 28(a). Consequently, this opinion will only address respondents' arguments as they relate to the minor child, E.R.K.

B. Adjudication

As discussed above, at "the adjudication stage, the trial court must determine whether there exists one or more grounds for termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)." *A.B.*, 239 N.C. App. at 160, 768 S.E.2d at 575 (citations omitted). "We review a trial court's adjudication under [N.C. Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re R.D.*, 376 N.C. 244, 248, 852 S.E.2d 117, 122 (2020) (citation and internal quotation marks omitted).

In his appellate brief, respondent-father acknowledges that he "was subject to a valid child support order and failed to make the required payments" and thus "concede[s] grounds exist to terminate his parental rights to [C.L.K.] and [E.R.K.]." In her appellate brief, respondent-mother makes no argument that the trial court's adjudication order, which found that "grounds have been proven to terminate [r]espondent[-]mother's parental rights for both children pursuant to" N.C. Gen. Stat. § 7B-1111(a)(1), (a)(2), and (a)(6), was unsupported by clear, cogent, or convincing evidence.

Again, "[i]ssues not presented and discussed in a party's brief are deemed abandoned." N.C.R. App. P. 28(a). Consequently, we conclude that grounds did exist to terminate respondent-mother and respondent-father's parental rights to E.R.K.

pursuant to N.C. Gen. Stat. § 7B-1111(a), and this conclusion was supported by clear, cogent, and convincing evidence. Next, we must determine whether termination of respondent-parents' parental rights was in the best interest of E.R.K.

C. Disposition

As discussed above, "[i]f the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest of the child, in accordance with N.C. Gen. Stat. § 7B-1110(a)." *A.B.*, 239 N.C. App. at 161, 768 S.E.2d at 575 (citation omitted). "The trial court's determination of the child's best interests is reviewed only for an abuse of discretion." *Id.* at 161, 768 S.E.2d at 575–76. "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." *Id.* at 161, 768 S.E.2d at 576 (citation omitted).

Moreover, although clear, cogent, and convincing evidence is required at the adjudication stage, there is a lower standard employed at the dispositional stage. *See In re M.Y.P.*, 378 N.C. 667, 682–83, 862 S.E.2d 773, 784 (2021) (noting that the trial court "applied the wrong evidentiary standard" when it applied a " 'clear, cogent, and convincing' standard to the dispositional phase"). "Although the question of the *sufficiency* of the evidence to support the findings may be raised on appeal . . . our appellate courts are bound by the trial courts' 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).

N.C. Gen. Stat. § 7B-1110(a) sets forth the criteria that "the court shall consider" in determining whether termination of parental rights is in the juvenile's best interest including:

> 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 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; and 6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)-(6) (2021).

In their appellate briefs, respondent-father and respondent-mother allege that "the trial court's [F]indings of [F]act 105, 107, 108, 111, and 115 of the termination order" are "partially or fully erroneous" and that "[C]onclusions of [L]aw 14 and 16 of the termination order are erroneous as being not adequately supported by proper findings of fact based upon competent evidence." We disagree.

Turning to the allegedly erroneous findings of fact in the termination order, we note that the court found:

> 105. The minor children have a high likelihood of being adopted.
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> . . . .
>
> 107. The minor child, [E.R.K.] moved to this current placement on [18 November] 2022. This placement was recruited as an adoptive placement of the minor child

> [E.R.K.]. The placement wants to adopt the minor child [E.R.K.] and has shown great commitment to him.
>
> 108. The minor child [E.R.K.] has done very well so far in his current placement and has been able to have all of his needs met. The minor child [E.R.K.] appears to have a strong bond with this foster family as he has already been introducing himself with their last name. The minor child [E.R.K.] also participated in respite with this family multiple times before moving there.
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> . . . .
>
> 111. The minor child, [E.R.K.] does not appear to have a bond with either [respondent-]parent. The minor child has not seen either [respondent-]parent in over two years due to the continued no contact and no visitation order. The minor child also does not ask about his parents. In addition, there [are] concerns about the harm that would come to the minor child [E.R.K.] if he was returned to the [respondent-parents'] care given the findings of sexual abuse by [respondent-father] and [respondent-mother's] adamant denial that the [respondent-father] engaged in these acts.
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> . . . .
>
> 115. The minor child [E.R.K.] currently has a parent/child bond with the placement providers that are willing to adopt him.

We will address the sufficiency of the evidence supporting each of the challenged findings of fact below.

i. Finding of Fact 105

Respondent-mother argues that Finding of Fact 105 "does not support a finding that [E.R.K.]'s adoption is of a 'high likelihood' " because "[t]he pre-adoptive

placement of [E.R.K.] as of the termination hearing was at least the fourth placement" in two and one-half years, and that E.R.K. had only been with his latest placement for two and one-half months at the time of the termination hearing.

Respondent-mother points to the fact that E.R.K.'s prior placements had been disrupted due to behavioral issues he exhibited and argues that such "serious issues" make the "high likelihood" of adoption in Finding of Fact 105 unsupported by competent evidence. Similarly, respondent-father argues that Finding of Fact 105 is "speculative and not based upon competent evidence" because "[t]here is no guarantee [E.R.K.] will ever be adopted."

Despite respondent-parents' contentions that Finding of Fact 105 is "not based upon competent evidence[,]" "our 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." *Montgomery*, 311 N.C. at 110–11, 316 S.E.2d at 252–53 (emphasis added). Here, there is ample evidence in the record to indicate that there is a "high likelihood" that E.R.K. will be adopted.

Indeed, in the 13 January 2023 DSS report, the social worker assigned to E.R.K.'s case reported that E.R.K. "is very bonded with the placement providers who express their desire for [E.R.K.] to be adopted into their family." Moreover, at the termination of parental rights hearing, the social worker testified that E.R.K. has had "multiple respites with [the pre-adoptive placement providers][,]" that the pre-adoptive placement providers "seem committed to [E.R.K.]" and that E.R.K.'s

relationship with the pre-adoptive placement reflects that they "are mom and dad to him."

Similarly, at the termination of parental rights hearing, the guardian ad litem testified that E.R.K. "is a wonderful, bubbly child" and that the placement he was currently in "is the best he's been in thus far because . . . he's the only child in the home and he can just thrive under all of that attention." When asked whether the pre-adoptive placement providers were "willing to adopt" the guardian ad litem replied, "[y]es, they are."

Although there is evidence in the record that might support a finding that E.R.K. *does not* "have a high likelihood of being adopted" due to his behavioral issues while in foster care, "there is *some* evidence" in the record, including testimony at the termination of parental rights hearing, as well as the 13 January 2023 DSS report, to support the trial court's finding that E.R.K. has a high likelihood of adoption. *Id.* (emphasis added). For this reason, we conclude that Finding of Fact 105 was supported by competent evidence and does support the district court's conclusion that termination of respondent-parents' parental rights would be in E.R.K.'s best interest.

ii. Finding of Fact 107

Additionally, respondent-mother argues that Finding of Fact 107 is "erroneous" because "competent evidence does not support" the finding that the "pre-adoptive placement providers had a 'great' commitment to [E.R.K.] . . . ." Similarly,

respondent-father argues that "the social worker only testified the foster parents were committed to him, not that there was a 'great' commitment."

Respondent-parents posit no argument nor cite any legal authority as to how this finding of fact is "erroneous" beyond the conclusory statements above. However, as discussed above, "there is some evidence to support th[is] finding," *id.*, that the placement providers had a "great" commitment to E.R.K. Namely, the placement providers had welcomed E.R.K. into their home for respite visits on multiple occasions, and despite E.R.K. "smearing his poop on the wall as well as recently throwing up everywhere in the playroom[,]" the 19 January 2023 DSS report noted that the pre-adoptive placement providers still "express[ed] their desire for [E.R.K.] to be adopted into their family" after these home visits.

As discussed above, at the termination of parental rights hearing on 1 February 2023, the social worker testified that E.R.K. had a "stronger bond with [the pre-adoptive placement providers] than he's had with any of his other foster parents[,]" that the pre-adoptive placement providers "are mom and dad to [E.R.K.][,]" and that they are "committed to [E.R.K.]."

Again, despite respondent-parents' claims that "competent evidence does not support" the finding that the placement providers have a "great" commitment to E.R.K., "our appellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings[.]" *Id.* at 110, 316 S.E.2d at 252. The aforementioned evidence in the record is sufficient to establish that Finding of Fact

107, that the pre-adoptive placement providers had a "great" commitment to E.R.K., was supported by competent evidence introduced at trial and in DSS reports.

iii. Finding of Fact 108

Respondent-mother further argues that Finding of Fact 108 is "at least partially erroneous" because they "cannot find in the competent evidence" that E.R.K., in his pre-adoptive placement, "has been able to have all of his needs met" or that "[E.R.K.] was introducing himself with the pre-adoptive placement providers' last name." Respondent-father acknowledges that a social worker testified that E.R.K. had a "stronger bond with [his pre-adoptive placement] than he's had with any of his other foster parent[s][,]" but argues that there "was no evidence" that E.R.K. and his new foster parents had a "strong bond" because E.R.K. "had been there less than [4] months."

Respondent-mother's argument regarding Finding of Fact 108 seems to hinge on whether the placement providers were able to meet *all* of E.R.K.'s needs; however, "there is some evidence to support th[ese] findings," *id.,* specifically, the social worker's testimony that the placement providers were "okay with being able to get [E.R.K.] in therapy and deal with his medication management" and that the placement providers were "currently trying to find him therapy since he moved." Moreover, despite respondent-mother's assertion that "the competent evidence does not indicate that [E.R.K.] was introducing himself with the pre-adoptive placement providers' last name," this ignores the explicit finding in the social worker's 13

January 2023 report which stated that E.R.K. "has already been introducing himself with [the pre-adoptive placement providers'] last name."

Finally, despite respondent-father's contention that competent evidence does not support a finding of a "strong bond" between E.R.K. and the placement providers, there is "some evidence to support th[is] finding[,]" *id.,* specifically, that the pre-adoptive placement providers still expressed a desire to adopt E.R.K. despite his prior behavioral issues. Consequently, there is competent evidence to support Finding of Fact number 108, and for this reason, "our appellate court[] [is] bound by the trial courts' finding[] of fact." *Id.*

iv. Finding of Fact 111

Next, respondent-mother alleges that Finding of Fact 111 is erroneous "due to being misleading" because E.R.K.'s bond had eroded with his mother due to the court's no-contact order. She argues that "[t]he trial court should not be allowed to cut off all contact . . . and then penalize the parent . . . due to little or no bond existing after the court's own orders caused" the erosion of their bond.

However, the circumstances behind the district court's finding that E.R.K. "does not appear to have a bond with either parent" are irrelevant, as the statute simply requires that the district court consider "[t]he bond between the juvenile and the parent[,]" not the attendant circumstances behind the bond or lack thereof. *See* N.C. Gen. Stat. § 7B-1110(a)(4).

The district court's finding of fact that E.R.K. does not have a bond with respondent-mother is supported by competent evidence, as respondent-mother has not had custody nor had contact with E.R.K. for over three years *due to her own actions*, namely, that respondent-mother allowed respondent-father, who had allegedly sexually abused at least one of her minor children, to continue to reside in the home with her other minor children for four months, from April until July 2020, despite her knowledge of J.A.S.'s allegations of sexual abuse by respondent-father.

Additionally, respondent-mother did not have visitation with the minor children because she violated the terms of the safety agreement that she entered into with DSS on 10 July 2020, which stipulated that respondent-father would "not be in the home or around any of the minor children." In August 2020, respondent-mother told the minor children to turn off their cell phones "because the cops could track [them][,]" and met up with respondent-father in a parking lot. She then made J.A.S. hug respondent-father, and allowed E.R.K. to spend the night with respondent-father.

Finally, when confronted with her daughter's allegations of sexual abuse by respondent-father, respondent-mother instructed J.A.S. to lie to authorities, claimed that J.A.S. "lies" and that "she did not believe the claims [J.A.S.] had made about [respondent-father][,]" and ultimately intended to bring the children back to the home of respondent-father. Respondent-mother cannot complain that the lack of a bond

between her and E.R.K. was because the court "cut off all contact" when, in fact, it was her own actions that led to the no visitation order by the court.

The circumstances attendant to the lack of bond between respondent-mother and E.R.K. are irrelevant, as the statute merely requires the court to consider the bond between the juvenile and the parent when making its ultimate conclusion of whether the termination of parental rights would be in the child's best interest. *See* N.C. Gen. Stat. § 7B-1110(a)(4). The court made written findings of fact pursuant to the statute, which were supported by competent evidence, and for this reason, respondent-mother's argument is unavailing.

v. Finding of Fact 115

Finally, respondent-mother and respondent-father allege that Finding of Fact 115 is "partially erroneous" because "[E.R.K.]'s newest placement providers, in less than two and one-half months placement, had not had the opportunity to develop a parent/child relationship with [E.R.K.]." According to respondent-mother, although "[E.R.K.] was comfortable with the new placement providers and was calling them mom and dad, *this* did not create nor even indicate the existence of a 'parent/child bond,' for to have such a bond, both the child *and* the adult(s) must, at a minimum, feel in such a way." (emphases in original). We disagree.

As discussed exhaustively above, the district court's finding of fact, that E.R.K. "currently has a parent/child bond with the placement providers" is supported by competent evidence, and "there is some evidence to support th[is] finding[],"

Montgomery, 311 N.C. at 110, 316 S.E.2d at 252, including testimony of the social worker that E.R.K. "is very comfortable with th[em][,] [t]hey are mom and dad to him[,] [h]e loves them[,]" that he is "already calling them mom and dad[,]" and that "[i]t is a mother-child bond" between "[E.R.K.] and his foster mother[.]" Similarly, the social worker testified that E.R.K.'s relationship with his foster father is "a father-child bond[,] [E.R.K.]'s extremely comfortable with him," and that when the social worker was with E.R.K. earlier that month "[E.R.K.] was very excited to go back home and spend time with [the foster father]."

Respondent-parents contend that despite E.R.K.'s comfort "with the new placement providers and [his] calling them mom and dad, *this* did not create or even indicate the existence of a 'parent/child bond,' for to have such a bond, both the child *and* the adult(s) must, at a minimum, feel in such a way." Respondent-mother cites no authority to support this proposition, and her argument misconstrues the district court's finding of fact, which states that "[*E.R.K.*] currently has a parent/child bond with the placement providers that are willing to adopt him." (emphasis added). The district court made no claim as to whether E.R.K.'s feelings of a parent/child bond were reciprocated, but *E.R.K.'s* parent/child bond with the placement provider was supported by competent evidence.

vi. Conclusions of Law 14 & 16

For all of the aforementioned reasons, respondent-mother concludes that "the trial court erred in entering conclusions of law 14 and 16, and engaged in an abuse of

discretion in so concluding." Similarly, respondent-father contends that the court abused its discretion in terminating his parental rights to E.R.K. because "[E.R.K.] was still in what can best be described as a 'honeymoon' period with this current foster home placement" and therefore "the court should not have found [E.R.K.] was likely to be adopted even though he currently had a good bond with the foster parents."

The conclusions of law challenged by respondents as "not adequately supported by proper findings of fact based upon competent evidence" are:

> 14. Pursuant to N.C. Gen. Stat. § 7B-1110, it is in the best interest of the minor children to terminate the [respondent-m]other's and [respondent-f]ather's parental rights.
>
> . . . .
>
> 16. The best interest of the minor children will be served by the entry of an Order terminating the parental rights of the [r]espondent[-m]other and the [r]espondent[-f]ather in and to the minor children.

However, "[t]he trial court's determination of the child's best interests is reviewed only for an abuse of discretion." *A.B.*, 239 N.C. App. at 161, 768 S.E.2d at 575–76. "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." *Id.* at 161, 768 S.E.2d at 576 (citation omitted).

In the present case, in reaching its determination that terminating the parental rights of respondent-mother and respondent-father was in the best interest

of E.R.K., the trial court considered all of the factors enumerated in N.C. Gen. Stat. § 7B-1110 and made written findings of fact relating to each of these statutorily mandated factors, all of which were supported by *some* competent evidence. Under these circumstances, the district court's conclusion that termination of respondents' parental rights to E.R.K. was in his best interest is not "manifestly unsupported by reason[,]" nor was it "so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citation omitted).

III. Conclusion

For the aforementioned reasons, the district court's order concluding that termination of respondent-parents' parental rights to E.R.K. was in E.R.K.'s best interest was supported by competent evidence, and the district court did not abuse its discretion in so concluding.

AFFIRMED.

Judges ZACHARY and STADING concur.

Report per Rule 30(e).