IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-482

Filed 2 April 2024

Yadkin County, No. 20 JT 49

IN RE: R.S.W.,

A MINOR CHILD.

Appeal by respondents from order entered 24 February 2023 by Judge Robert J. Crumpton in Yadkin County District Court. Heard in the Court of Appeals 18 March 2024.

James N. Freeman, Jr., for petitioner-appellee Yadkin County Human Services Agency.

Matthew D. Wunsche for guardian ad litem.

Hooks Law, P.C., by Laura G. Hooks, for respondent-appellant father.

Robert W. Ewing for respondent-appellant mother.

PER CURIAM.

Respondent-father and respondent-mother appeal from the trial court's order terminating their parental rights to their minor child, R.S.W. ("Rachel").[1] Respondent-mother challenges the trial court's conclusion that grounds for

[1] A pseudonym is used to protect the identity of the minor child and for ease of reading.

termination of her rights exist under N.C. Gen. Stat. § 7B-1111(a)(1) and (6). Respondent-father challenges the trial court's conclusions that grounds for termination of his parental rights exist under N.C. Gen. Stat. § 7B-1111(a)(1)–(3) and that termination of his rights was in Rachel's best interests. After careful review, we conclude that both parents' arguments are meritless and affirm the trial court's order.

I. Background

Petitioner Yadkin County Human Services Agency (YCHSA) first became involved with this family on 19 August 2020, when it received a Child Protective Services report alleging that Rachel lived in a home filled with trash and without power. The report also alleged that respondent-father yelled and screamed at Rachel, to the point that she felt unsafe, and that Rachel slept in the same bed as respondent-father and his girlfriend, who would sometimes have sex in Rachel's presence.

A YCHSA caseworker attempted to contact respondent-father but was unsuccessful. The caseworker then visited the home of respondent-mother, finding it cluttered and unsanitary, with cockroaches visible on multiple surfaces. Respondent-mother reported that respondent-father's home lacked electricity and running water and alleged that he denied Rachel access to food.

On 24 August 2020, the caseworker met with both respondents at respondent-mother's home. Respondent-father stated that his housing was unstable, and he refused to provide the caseworker with his address. He denied the allegations that his home lacked electricity and running water, that he yelled at Rachel, and that

Rachel slept with him. However, Rachel disclosed to the caseworker that the lights and water did not work and that she shared a bed with respondent-father. Additionally, Rachel, who was seven years old, was not enrolled in school.

A safety plan was put into place, pursuant to which Rachel would live with respondent-mother, while respondent-mother would work to improve the condition of her home, until respondent-father provided his address to YCHSA. YCHSA subsequently began providing in-home services to help improve the condition of the home and to help respondent-mother with her parenting skills.

After a referral to Parenting Path, which provides intensive family preservation services, it was discovered that a 2007 psychological evaluation revealed that respondent-mother's intelligence ranked in the first percentile and that, due to these limitations, respondent-mother was in ongoing need of a caseworker to assist her in parenting and managing her affairs. In light of respondent-mother's limitations, YCHSA assisted respondent-mother with getting Rachel enrolled in school, scheduling and attending medical appointments, purchasing groceries, and completing housing applications, Medicaid forms, and child support forms.

Respondent-mother made some progress on her home's condition, such that the roach infestation became minimal. However, there were other issues with the residence, including power surges that blew out light bulbs and a "soft" floor in the bathroom that respondent-mother feared she would fall through.

On 27 October 2020, respondent-mother reported a "sizzling" sound emanating

from the stove. When the Fire Marshal inspected the home, he found no issues with the stove but had several concerns regarding the wiring and breaker boxes. These concerns were also shared by a building inspector who inspected the home a few days later. Because of the unsafe conditions, YCHSA arranged for respondent-mother and Rachel to stay in a hotel for the weekend, with a transfer to a shelter thereafter.

On 2 November 2020, respondent-mother informed YCHSA that she did not believe she was capable of parenting Rachel in a shelter environment. In addition, she did not have an acceptable alternative living plan for her and Rachel. As a result, YCHSA filed a juvenile petition alleging that Rachel was neglected. YCHSA obtained nonsecure custody of Rachel and placed her in foster care.

On 9 December 2020, the trial court entered an order which, *inter alia*, appointed a guardian *ad litem* (GAL) for respondent-mother under N.C. Gen. Stat. § 1A-1, Rule 17. The juvenile petition came on for hearing on 25 March 2021, and on 7 July 2021, the trial court entered an order adjudicating Rachel to be a neglected juvenile and continuing Rachel's placement in the legal and physical custody of YCHSA. Each parent was awarded biweekly, supervised visitations for a minimum of one hour, which YCHSA could expand in frequency or duration "if deemed appropriate."

The first permanency planning hearing was held on 29 July 2021. In its written order from that hearing entered on 6 October 2021, the trial court found that both parents had entered into case plans with YCHSA and described their initial progress.

Respondent-father entered into a case plan on 4 December 2020. Under the terms of the case plan, he agreed to complete a mental health assessment and follow any recommended treatment; complete parenting classes and effectively demonstrate the skills learned in those classes; and secure and maintain appropriate housing. Respondent-father's progress was limited; he was scheduled to have a mental health assessment, but he had not begun parenting classes or provided YCHSA with a home address. In the preceding months, respondent-father had claimed at various times that he was living with a girlfriend or with respondent-mother.

Respondent-mother entered into her case plan on 12 November 2020, which included the same goals as respondent-father's plan. Respondent-mother made more initial progress than respondent-father: she had completed a mental health assessment but was not engaged in the individual outpatient therapy or small group socialization recommended by that assessment; she was diligently participating in her parenting program; and she had secured appropriate housing with assistance from YCHSA.

However, there were concerns that respondent-mother's landlord might evict her because he had repeatedly reprimanded her for smoking and respondent-father had briefly lived with her in violation of the lease. Respondent-mother reported to a YCHSA caseworker that she had kicked respondent-father out because he was dealing drugs and not making any effort to get his daughter back.

The trial court established an initial primary permanent plan of reunification

with a secondary plan of adoption. Based on respondent-mother's allegations, respondent-father was ordered to submit to drug screening and to undergo a substance abuse evaluation and treatment. Respondents' visitation schedules remained the same.

The next permanency planning hearing was held on 18 November 2021. The trial court entered its order from this hearing on 2 February 2022. The court again described each parent's progress. Respondent-father had undergone a mental health assessment, completed five sessions of a parenting program, and recently provided YCHSA with an address (which YCHSA had not yet confirmed or inspected); however, he had failed to report to all drug screens requested by YCHSA. Respondent-mother had completed a parenting program, remained in the same housing, and undergone a second psychological assessment that found she was low-functioning and unable to properly parent Rachel without considerable assistance.

Based on this lack of progress, the trial court determined that further reunification efforts with both parents would be unsuccessful and, accordingly, relieved YCHSA of further reunification efforts and changed the primary permanent plan to adoption with a secondary plan of guardianship. Visitation remained unchanged.

Also, on 2 February 2022, YCHSA filed a motion in the cause to terminate both respondents' parental rights. As to respondent-father, YCHSA alleged that his rights could be terminated based on neglect, willfully leaving Rachel in foster care for more

than twelve months without making reasonable progress on correcting the conditions that led to her removal, and willfully failing to pay a reasonable portion of Rachel's cost of care. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3) (2021). With respect to respondent-mother, YCHSA alleged that her rights could be terminated based on neglect and dependency. *See id.* § 7B-1111(a)(1), (6).

A final permanency planning hearing was held by the trial court on 5 May 2022. On 10 October 2022, the trial court entered an order, in which it found that respondent-father completed a parenting program on 14 April 2022 and that he provided the court with a copy of a rental agreement dated 21 April 2022. The court found that respondent-mother had not made any additional progress on her mental health issues or parenting skills and that she was no longer in the residence secured for her by YCHSA. The trial court did not modify the permanent plans or visitation.

The motion to terminate respondents' parental rights came on for hearing on 10 October 2022. On 24 February 2023, the trial court entered an order concluding that both respondents' parental rights were subject to termination based on the grounds alleged by YCHSA. The court further concluded that terminating both respondents' rights was in Rachel's best interests.

Respondents filed timely notice of appeal.

II. Grounds for Termination

A termination of parental rights hearing begins with the adjudication of the grounds for termination alleged by the petitioner. *See In re N.D.A.*, 373 N.C. 71, 74,

833 S.E.2d 768, 771 (2019), *overruled in part on other grounds by In re G.C.*, 384 N.C. 62, 66 n.3, 884 S.E.2d 658, 661 n.3 (2023). Here, YCHSA alleged, and the trial court adjudicated, three grounds for termination for respondent-father and two grounds for termination for respondent-mother. Both parents challenge each of their respective termination grounds.

A. Standard of Review

This Court reviews the trial court's adjudication of termination grounds to determine "whether the trial court's conclusions of law are supported by adequate findings and whether those findings, in turn, are supported by clear, cogent, and convincing evidence." *In re A.J.L.H.*, 384 N.C. 45, 53, 884 S.E.2d 687, 693, *reh'g denied*, 384 N.C. 670, ___ S.E.2d ___ (2023). Any unchallenged findings are "deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). The trial court's conclusions of law are reviewed de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

B. Neglect

The trial court determined that both respondents' parental rights were subject to termination based on neglect because Rachel met the statutory definition of a "neglected juvenile." N.C. Gen. Stat. § 7B-1111(a)(1) (2021). A neglected juvenile includes a juvenile whose parent "[d]oes not provide proper care, supervision, or discipline[,]" or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." N.C. Gen. Stat. § 7B-101(15)(a), (e) (2021).

When a child has been out of the parent's custody for a significant length of time, "neglect may be established by a showing that the child was neglected on a previous occasion and the presence of the likelihood of future neglect by the parent if the child were to be returned to the parent's care." *In re J.D.O.*, 381 N.C. 799, 810, 874 S.E.2d 507, 517, *reh'g denied*, 382 N.C. 727, ___ S.E.2d ___ (2022). "When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." *In re R.L.D.*, 375 N.C. 838, 841, 851 S.E.2d 17, 20 (2020) (citation omitted). "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

1. Respondent-Father

Respondent-father challenges some of the trial court's findings of fact that support its adjudication of the neglect ground. He challenges the portions of findings of fact 22, 24, 26, 27, 31, and 34, which discuss his lack of progress in the different areas of his case plan. We address these challenges in groups based on the area of the case plan to which the challenged findings apply.

a. Parenting Skills

Respondent-father challenges the trial court's finding that he "has failed to remedy concerns regarding his parenting abilities that have existed since the inception of the case" because the court also found a few sentences earlier that the

extent to which his parenting skills had improved was uncertain. However, there is nothing inherently contradictory between these sentences. The trial court's reference to "uncertain[ty]" refers to whether respondent-father's parenting skills improved because of completing parenting classes.

However, an unchallenged different sentence in the same portion of the finding reflects that any uncertainty regarding respondent-father's parenting skills was attributable to his lack of progress overall: "He has never progressed to the extent necessary for the [c]ourt to grant him a trial home placement or the ability to independently supervise the child." Without progressing beyond supervised visitation, respondent-father could not remedy the concerns regarding his parenting abilities. This challenge is without merit.

b. Housing

Respondent-father next challenges the trial court's findings that he "has failed to demonstrate the ability to obtain and maintain housing that would be safe and appropriate for the minor child" and "failed to remedy concerns regarding his housing[.]" He argues that he submitted a lease showing that he had been living in the same residence since April 2022, demonstrating that he has obtained stable housing. However, respondent-father does not challenge the trial court's findings regarding the numerous different addresses he lived in while Rachel was in YCHSA's custody, including an unidentified address when Rachel came into care in March 2021, living with his girlfriend in April 2021, living with respondent-mother in June

2021, returning to either his girlfriend or his truck a few days later in June 2021, and residing at a Mount Airy address in November 2021.

Regarding his current address, respondent-father does not challenge the trial court's finding that the lease he provided noted that the "home is older, aware of flaws, accept as is." YCHSA caseworker Kim McDevitt testified that although YCHSA had not seen the property covered by the lease, this notation raised concerns "that there would be some issues with the home that need[ ] significant repair."

Respondent-father argues that McDevitt's testimony failed to establish that his residence was inappropriate at the time of the termination hearing, since by McDevitt's own concession, YCHSA had not viewed the home. He contends that "no evidence was presented that the residence is not safe and appropriate[.]"

However, the lease and its included notation acknowledging the home's "flaws" were evidence regarding the home's condition, and it was for the trial court as trier of fact to determine what inferences to draw from that evidence. *See In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 168 (recognizing that, as the trier of fact, the trial court determines "the reasonable inferences to be drawn" from the evidence (citation omitted)), *reh'g denied*, 369 N.C. 43, 789 S.E.2d 5 (2016). Here, the trial court could and did infer that the notation on the lease meant that the home was inappropriate.

Given the preceding unchallenged findings regarding the significant instability in respondent-father's housing situation during the period in which Rachel was in YCHSA custody and the evidence regarding respondent-father's current

residence, the trial court did not err by finding that respondent-father had failed to obtain and maintain adequate housing or otherwise remedy the housing concerns that led to Rachel's removal.

c. Drug Screens

Respondent-father also challenges the trial court's finding that he did not engage in any drug screens requested by YCHSA following the 29 July 2021 permanency planning hearing and November 2021 cessation of reunification efforts, arguing there was no evidence supporting this finding. However, McDevitt testified that YCHSA "requested that [respondent-father] submit to random drug screening on four different occasions following visits with the child[,]" but he failed to report for any of those four requested screens. This testimony is sufficient to support the trial court's finding.

d. Communication with YCHSA

Respondent-father additionally challenges the trial court's finding that his "communication with . . . YCHSA has been inconsistent over the life of the case, including going extended periods of time[ ] refusing to share an address and making his whereabouts unknown to the [a]gency." This finding is also supported by McDevitt's testimony. She stated that "[f]or the first over half of this case, [respondent-father] did not maintain contact with us or give us his whereabouts and discuss with us his living circumstances."

e. Return Home and Repetition of Neglect

Finally, respondent-father challenges the trial court's finding that "[i]t is not possible for the child to be returned to the home of a parent at this time" and its findings and conclusions supporting its determination that there was a substantial likelihood of repetition of neglect if Rachel was returned to his care. He argues that the evidence presented at the termination hearing reflected that he completed his case plan, such that the circumstances that led to Rachel's removal had sufficiently changed to allow her to be returned to him without a likelihood of repetition of neglect.

Although respondent-father made some progress on his case plan, most of his progress did not occur until late in the case and, as discussed above, was limited. As found by the trial court, respondent-father did not complete his parenting program until 14 April 2022, more than a year after he was referred to the program and more than two months after the termination motion was filed. Respondent-father did not make sufficient progress to move beyond supervised visitation with Rachel, and YCHSA was uncertain as to the extent his parenting skills had improved. Respondent-father never submitted a drug screen after being ordered by the court to do so at the 29 July 2021 permanency planning hearing, and his living situation remained unstable over the life of this case.

Given these circumstances, the trial court could properly find that Rachel would experience a repetition of neglect if she were returned to respondent-father's care. Accordingly, the court did not err by concluding that respondent-father's

parental rights could be terminated based on neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

2. Respondent-Mother

Respondent-mother also disputes that her parental rights were subject to termination based on neglect. She challenges the trial court's findings of fact to the extent that they purport to assess her progress through the time of the termination hearing, because she asserts that the only evidence presented at the hearing relied on "stale information[.]" Respondent-mother emphasizes that almost a year passed between the cessation of YCHSA's reunification efforts on 18 November 2021 and the termination hearing on 11 October 2022 and contends that YCHSA did not make any efforts to monitor her progress during that time.

a. Mental Health and Parenting Skills

The trial court's findings of fact reflect that respondent-mother submitted to two psychological assessments while Rachel was in YCHSA custody. The psychological assessments both revealed that respondent-mother had cognitive deficiencies that negatively impacted her ability to function and parent. As reflected in the trial court's unchallenged findings, the first assessment, conducted in November 2020, diagnosed respondent-mother with "Intellectual Development Disorder, moderate, with low adaptive functioning" and recommended that she engage in individual therapy, which respondent-mother refused to do.

The second assessment, which occurred in August 2021, stated that

respondent-mother's "intellectual limitations make it very unlikely that she will understand much about her child's daily or developmental needs or that she would benefit from typical instruction in parenting skills." It went on to state that respondent-mother "will struggle to be successful in providing for [Rachel]'s needs" and "will require considerable support, probably for so long as [Rachel] is dependent on others for survival."

Respondent-mother's progress on her parenting goals was consistent with the limitations identified in her psychological assessments. Although respondent-mother completed parenting classes in June 2021, she struggled with subsequent visitations. Due to these struggles, YCHSA referred respondent-mother for a parenting assessment in August 2021, which found that respondent-mother struggled to set limits and structure for Rachel, was nervous and confused about engaging with Rachel, made no effort to nurture Rachel, and could not give clear directions or lead Rachel in the initiation of tasks.

Respondent-mother's various assessments consistently identified her inherent intellectual limitations, and there was no evidence to suggest that respondent-mother's ability to parent Rachel had improved by the time of the termination hearing. Caseworker McDevitt testified at the hearing that respondent-mother had not remedied any of YCHSA's concerns regarding her mental health, her ability to parent Rachel, or her ability to maintain safe and appropriate housing. She further testified that respondent-mother had not sought any additional individual mental

health treatment, that YCHSA had "ongoing concerns" about respondent-mother's parenting skills and housing, and that it would not be safe to return Rachel to respondent-mother's care, either as of the date of the termination hearing or within six months after the hearing.

McDevitt's testimony shows that the evidence presented to the trial court was not stale, as she provided YCHSA's opinion regarding respondent-mother's progress as of the time of the termination hearing. Although respondent-mother correctly notes that her psychological and parenting assessments occurred more than a year before the hearing, they all identified intellectual limitations that were permanent in nature such that they would not have changed between the time of the assessments and the termination hearing. To the extent that respondent-mother could mitigate the effects of her intellectual disabilities by participating in individual therapy, McDevitt testified that respondent-mother refused to do so.

b. Housing

Respondent-mother represented that, at the time of the termination hearing, she was living with respondent-father in the home where the lease noted, "home is older, aware of flaws, accept as is." Like respondent-father, respondent-mother argues that YCHSA failed to establish that this home was unsafe, and she further argues that, by accepting the limited evidence presented by YCHSA, the trial court improperly shifted the burden to respondent-mother to show her home was appropriate.

As discussed above, YCHSA presented evidence regarding the acceptability of respondents' home through the lease, which noted the home's flaws and McDevitt's testimony that the notation raised concerns "that there would be some issues with the home that need[ ] significant repair." McDevitt also stated that these concerns were particularly acute as regards respondent-mother, as she had a "pattern . . . of inappropriate housing arrangements even going back to her childhood[.]" The trial court, as trier of fact, was permitted to decide how much weight to give this evidence when deciding whether respondent-mother had remedied her issues with housing. *See D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 168.

As neither respondent rebutted the evidence presented by YCHSA, the trial court did not err by finding that respondent-mother "failed to demonstrate that she can procure and maintain safe, stable[,] and appropriate housing." *See In re A.R.A.,* 373 N.C. 190, 196, 835 S.E.2d 417, 422 (2019) (stating "the district court did not improperly shift DSS'[s] burden of proof onto [the] respondent-mother" but "simply observed that [the] respondent-mother had failed to rebut DSS'[s] clear, cogent, and convincing evidence that she and the father had not established safe and stable housing for the children").

c. Likelihood of Repetition of Neglect

Taking into consideration respondent-mother's intellectual disabilities and her inability to show progress on the identified issues with her mental health, parenting skills, and housing, the trial court properly found a likelihood of repetition of neglect

if Rachel were returned to respondent-mother's care. Thus, as with respondent-father, the trial court properly concluded that respondent-mother's parental rights were subject to termination based on neglect under N.C. Gen. Stat. § 7B-1111(a)(1).

In that we have concluded that the trial court's findings of fact adequately support the neglect ground with regard to both parents, we need not address either respondent's remaining arguments concerning the other grounds for termination found by the trial court. *See A.R.A.*, 373 N.C. at 194, 835 S.E.2d at 421 ("[A] finding of only one ground is necessary to support a termination of parental rights . . . .").

III. Best Interests

After concluding that grounds for termination exist, the trial court conducts a dispositional hearing to determine whether termination is in the child's best interests. *See N.D.A.*, 373 N.C. at 74, 833 S.E.2d at 771. Here, the court concluded that terminating both respondents' rights was in Rachel's best interests. Only respondent-father challenges this conclusion.

A. Standard of Review

This Court reviews the trial court's assessment of a child's best interests for an abuse of discretion. *In re A.K.O.*, 375 N.C. 698, 701, 850 S.E.2d 891, 894 (2020). "Under this 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 Z.A.M.*, 374 N.C. 88, 100, 839 S.E.2d 792, 800 (2020) (cleaned up). The trial court's dispositional findings are binding on appeal if they are either

unchallenged or supported by any competent evidence. *In re K.N.K.*, 374 N.C. 50, 57–58, 839 S.E.2d 735, 740–41 (2020).

B. Best Interests Factor

Under N.C. Gen. Stat. § 7B-1110, in making a best interests determination, the trial 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.
>
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a) (2021).

In the termination order, the trial court made findings regarding the relevant statutory factors. Respondent-father challenges two of these findings: that "[s]ome bond remains between [respondent-father] and the child"; and that "[t]here is no reasonable probability that the family unit can be reunited within a reasonable or foreseeable period of time."

Regarding his bond with Rachel, respondent-father argues that the qualifier

"some" mischaracterizes and unfairly minimizes the bond. However, at disposition, the guardian *ad litem* presented a court report in which she stated that while respondents "seem to be bonded with [Rachel,]" the GAL "has observed [Rachel] is not equally bonded with them." The GAL stated that Rachel's "bond with [her] parents is similar to a bond with playmates, not parents[.]" This report provides competent evidence to support the trial court's finding of "some" bond between respondent-father and Rachel.

As to the finding concerning the possibility of reunification of Rachel and respondents' family, respondent-father contends it is unsupported because "the evidence shows a child who knows her father, loves him, and still refers to him as daddy." These facts do not refute the trial court's determination that reunification is not possible for the foreseeable future, particularly in light of the trial court's adjudication of multiple grounds for terminating respondent-father's parental rights.

The trial court's findings of fact reflect that it considered the required factors under N.C. Gen. Stat. § 7B-1110(a), including that Rachel is "well bonded" with her foster family, and that the likelihood of her foster parents adopting her is "extremely high" once it is legally possible. Based on its findings, the court concluded that termination was in Rachel's best interests. Respondent-father fails to show this conclusion was an abuse of discretion.

IV. Conclusion

There were sufficient findings of fact, supported by clear and convincing

evidence, to support the trial court's conclusion that there were grounds to terminate both respondents' parental rights based on neglect. The trial court did not abuse its discretion by concluding that termination was in Rachel's best interests. Accordingly, we affirm the trial court's order terminating respondents' rights.

AFFIRMED.

Panel consisting of:

Judges ZACHARY, CARPENTER, and THOMPSON.

Report per Rule 30(e).