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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-678

Filed 2 January 2024

New Hanover County, No. 22 JT 66

IN THE MATTER OF: S.C.M., Jr.

Appeal by respondent-father from order entered 23 March 2023 by Judge J.H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 18 December 2023.

LeeAnne Quattrucci for the petitioner-appellee mother.

Kimberly Connor Benton for the respondent-appellant father.

STADING, Judge.

Respondent-father appeals from the trial court's order terminating his parental rights to his son Sam¹ in this private termination action. Upon review, we affirm.

I. Background

¹ Pseudonyms are used to protect the identity of the minor children. See N.C. R. App. P. 42.

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On 21 April 2022, Sam’s mother (“petitioner-mother”) initiated this action by filing a petition to terminate respondent-father’s parental rights. Among other things, petitioner-mother alleged that five-and-a-half-year-old Sam was in her sole legal and primary physical custody, respondent-father has not participated in Sam’s life for over six months, and grounds existed to terminate respondent-father’s parental rights for neglect, failure to provide financial support for Sam, and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (4), (7) (2023). Petitioner-mother further asserted that respondent-father’s conduct demonstrates he will not promote Sam’s physical and emotional well-being, Sam is in need of permanence that can only be accomplished by severing the relationship between Sam and respondent-father, and termination was thus in Sam’s best interests.

Respondent-father, through appointed counsel, filed an answer to the petition on 11 May 2022, denying that grounds existed to terminate his parental rights and seeking dismissal of the petition. Since respondent-father contested the petition, a guardian ad litem (GAL) was appointed for Sam. *See* N.C. Gen. Stat. § 7B-1108(b) (2023).

After several continuances, the petition was heard in the trial court on 6 and 16 February 2023. On 23 March 2023, the trial court entered an order terminating respondent-father’s parental rights. The trial court adjudicated the existence of each ground for termination alleged in the petition, *see* N.C. Gen. Stat. § 7B-1111(a)(1),

(4), (7), and determined it was in Sam’s best interests to terminate respondent-father’s parental rights at disposition. Respondent-father appeals.

II. Jurisdiction

This Court has jurisdiction to hear an appeal of a trial court’s order terminating parental rights under N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

III. Analysis

Respondent-father only challenges the trial court’s determination at the dispositional stage that terminating his parental rights was in Sam’s best interests. Termination of parental rights is a two-step process, consisting of an adjudicatory stage and a dispositional stage. N.C. Gen. Stat. §§ 7B-1109, -1110 (2023). “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) (2023). In assessing a juvenile’s best interests,

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.

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- (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).

We review the trial court’s dispositional findings to determine if they are supported by competent evidence and review the court’s determination that termination is in a juvenile’s best interests solely for abuse of discretion. *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020). Findings are supported by competent evidence and binding “where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.” *In re J.C.J.*, 381 N.C. 783, 795, 874 S.E.2d 888, 897 (2022) (citing *In re Montgomery*, 311 N.C. 101, 110–11, 316 S.E.2d 246, 252–53 (1984)). “[A]buse 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 A.U.D.*, 373 N.C. 3, 6–7, 832 S.E.2d 698, 700–01 (2019) (alteration in original) (citing *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015)).

In this case, the trial court made the following findings relevant to its determination of Sam’s best interests under N.C. Gen. Stat. § 7B-1101(a):

- 6. That the juvenile, [Sam], is in the legal and physical custody of the [petitioner-mother] pursuant to court order

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since February 10, 2020. . . .

. . . .

9. That [Sam] currently lives with [petitioner-mother] in their home. . . . [Petitioner-mother] is committed to ensuring that [Sam] is well cared for and happy. All of [Sam's] needs are being met. [Sam] is healthy, well adjusted, and in a stable and loving environment.

. . . .

17. That the [GAL] arranged and facilitated a visitation post-Petition. At that visit, [Sam] did not know who [respondent-father] was. . . .

. . . .

19. [Respondent-father] made promises to [Sam] and failed to follow through on more than one occasion to the detriment of [Sam's] emotional well-being. Consequently, a reported parental-child relationship or bond between [respondent-father] and [Sam] was not formed and does not currently exist.

20. [Petitioner-mother's] significant other . . . has acted in a fatherly role for [Sam]. [He] has been actively involved in the care of [Sam], attending his school activities and other extracurricular activities. [He] has filled the gaps left by [respondent-father's] neglect and abandonment of [Sam].

21. That terminating the rights of [respondent-father] increases the likelihood of adoption by [petitioner-mother's significant other].

. . . .

23. It is in the best interest of [Sam] that the parental rights of [respondent-father] be terminated.

. . . .

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28. . . . [Sam] currently lives with [petitioner-mother] and their bond is very evident. [Petitioner-mother] is committed to ensuring that [Sam] is well cared for and happy. All of [Sam's] needs are being met.

29. . . . [Petitioner-mother] provides a stable environment and is attentive to [Sam's] needs. [Petitioner-mother] has provided him with a spacious and well-appointed home. [Sam] is an active and outgoing child who has access to his toys and various activities. [Sam] has a strong relationship with [petitioner-mother] and his maternal grandmother.

30. That [Sam] is six years old and needs consistency and stability. That the [GAL] recommended to the [c]ourt that it was in the best interests of [Sam] that the parental rights of [respondent-father] be terminated. Currently, [petitioner-mother] is committed to caring for [Sam] and is actively engaged in his educational, social[,] and medical well-being. The termination of the parental rights of [respondent-father] would allow [Sam's] well-being to continue without further disruption.

. . . .

33. That [Sam] has not seen nor heard from [respondent-father] for many years. There is no close bond between [Sam] and [respondent-father] due to [respondent-father's] abandonment and neglect. [Sam] does not inquire about his father. He is well adjusted and happy.

34. . . . [T]ermination of parental rights is in the best interests of [Sam] at this time. Termination of parental rights will aid in the additional stability and permanence of [Sam's] life and well-being.

The trial court then issued the following conclusions relevant to Sam's best interests:

3. That . . . there is a strong likelihood of adoption, that terminating the rights of [respondent-father] will aid in the permanent plan of [Sam], that there is no bond between

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[respondent-father] and [Sam], that there is a strong parental relationship between [petitioner-mother] and a good father like relationship between [petitioner mother's significant other] and [Sam].

[4.]² That it is in the best interest of [Sam] that the parental rights of [respondent-father] . . . be terminated.

In challenging the trial court's best interests determination, respondent-father first takes issue with findings of fact nos. 21, 23 and 34. The remaining findings of fact are unchallenged and are binding on appeal. *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d. 54, 58 (2019) ("Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.").

We first address respondent-father's contention that findings of fact nos. 23 and 34 are conclusions of law and should be reviewed as such to the extent the trial court determined that terminating his parental rights was in Sam's best interests. Petitioner-mother takes no issue with respondent-father's contention, and we agree. Here, the trial court included its best interests determination in findings of fact nos. 23 and 34 and in conclusion of law no. 4. This Court has recognized "[a] determination regarding the best interests of a child is a 'conclusion of law because [it] require[s] the exercise of judgment.'" *In re J.R.S.*, 258 N.C. App. 612, 617, 813 S.E.2d 283, 286 (2018) (alterations in original) (quoting *In re Helms*, 127 N.C. App. 505, 510–11, 491

² The trial court included two conclusions labeled number three. We correct the misnumbering for clarity.

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S.E.2d 672, 676 (1997)). Since “[w]e are obliged to apply the appropriate standard of review to a finding of fact or conclusion of law, regardless of the label which it is given by the trial court[],” *In re J.S.*, 374 N.C. 811, 818, 845 S.E.2d 66, 73 (2020), we review the trial court’s best interests determination as a conclusion of law to determine whether the court abused its discretion based on its findings of fact. *See In re K.N.K.*, 374 N.C. at 57, 839 S.E.2d at 740.

Turning to finding of fact no. 21, respondent-father argues the trial court’s finding that terminating his parental rights “increases the likelihood of adoption” by petitioner-mother’s significant other is not supported by competent evidence. In conjunction with finding of fact no. 21, the trial court also determined that “there is a strong likelihood of adoption” in conclusion of law no. 3, which respondent-father also challenges as unsupported by evidence and reason. Because the likelihood of adoption is better classified as an ultimate finding of fact, and because respondent-father raises the same contentions with regard to finding 21 and conclusion 3, we address them together. *See* N.C. Gen. Stat. § 7B-1110(a) (including the likelihood of adoption among the criteria the court shall make findings about); *In re G.C.*, 384 N.C. 62, 65 n.3, 884 S.E.2d 658, 661 n.3 (2023) (clarifying that ultimate facts are final facts on which parties rights are to be judged that are determined from evidentiary facts and natural reasoning); *In re K.N.L.P.*, 380 N.C. 756, 764, 869 S.E.2d 643, 649 (2022)

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(reviewing a determination that there was a likelihood of adoption as a finding of fact).

Respondent-father directs the Court to evidence that petitioner-mother was not married, did not live with her significant other, and did not have a wedding date planned. Because petitioner-mother's significant other is not eligible to adopt Sam until they are married and have lived together with Sam for six months, *see* N.C. Gen. Stat. § 48-4-101(1) (2023), respondent-father argues the court's determination that there is a likelihood of adoption is not supported by evidence or reason. Relying on *In re R.D.*, 376 N.C. 244, 264, 852 S.E.2d 117, 132 (2020), respondent-father further contends the trial court's findings about a likelihood of adoption were prejudicial to him because the erroneous findings could have influenced the trial court's best interests determination. He asserts it cannot be determined if the trial court would reach the same result absent the findings. We are not persuaded.

The trial court did not find adoption was imminent or certain upon termination of respondent-father's parental rights. The court found there was a strong likelihood of adoption, and that termination increased the likelihood. Petitioner-mother testified at various times that she intended and had plans to marry her long-term boyfriend; that she had discussed Sam's adoption with her boyfriend if respondent-father's parental rights were terminated; and that her boyfriend would like to adopt Sam when and if they marry. Petitioner-mother specifically testified that the

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possibility of adoption was part of the reason for seeking to terminate respondent-father's parental rights. Respondent-father discounts this testimony on the basis that the GAL testified she had not discussed adoption with petitioner-mother. "However, it is the duty of the trial court to determine the weight and credibility of the evidence." *In re G.G.M.*, 377 N.C. 29, 39, 855 S.E.2d 478, 485 (2021). This Court does not reweigh the evidence or substitute its judgment for that of the trial court. *In re N.P.*, 374 N.C. 61, 66, 839 S.E.2d 801, 804 (2020). It is evident the trial court found petitioner-mother's testimony credible, and petitioner-mother's testimony was competent evidence to support the trial court's findings that there is a likelihood of adoption, and that termination of respondent-father's parental rights increases that likelihood given that termination eliminates the need for respondent-father's consent to adoption. *See* N.C. Gen. Stat. § 48-3-603(a)(1) (2023). Respondent-father's challenges to the trial court findings of a likelihood of adoption are overruled.

We next turn to the court's conclusion that termination of respondent-father's parental rights was in Sam's best interests. Having upheld the challenged findings, respondent-father's arguments that he was prejudiced by erroneous findings, and that it cannot be determined whether the trial court would reach the same result absent the findings, inevitably fail. Nevertheless, we note that the instant case is distinguishable from *In re R.D.*, 376 N.C. 244, 852 S.E.2d 117, on which respondent-father relies. In that case, the Court determined the trial court's finding that children

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who are adopted face prospective harm simply by virtue of the fact that they are adopted was unsupported by any evidence and reflected an inappropriate bias against adoption. *Id.* at 263, 852 S.E.2d at 131. The Court “deem[ed] this inappropriate finding to be prejudicial because of the possibility that it influenced the trial court’s ultimate best interests determination.” *Id.* at 264, 852 S.E.2d at 132. The Court explained that it was unable to determine whether the trial court would have reached its conclusion that termination of parental rights was not in the juvenile’s best interests absent the inappropriate finding, given that a number of factors suggested the juvenile’s interests were likely to be best served by terminating parental rights. *Id.*

In the instant case, the likelihood of adoption was one of a number of factors considered and did not weigh against the trial court’s findings on other relevant factors in the best interests determination. Furthermore, while the likelihood of adoption may be relevant in private termination cases, our Courts have noted the likelihood of adoption becomes “more relevant in a [termination] case in which a child is in the custody of a Department of Social Services agency and termination of the parent’s rights leaves the child as a ward of the State.” *In re C.J.C.*, 374 N.C. 42, 49, 839 S.E.2d 742, 748 (2020). It appears the trial court was aware of the reduced significance of the likelihood of adoption in this case, noting in open court that “[t]his is different than a DSS case where . . . a pre-adoptive placement has been identified

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and adoption has been the plan” and that adoption was “not essential to my finding that its in this child’s best interest[s]” to terminate parental rights. The likelihood of adoption was one of a number factors the trial court considered under N.C. Gen. Stat. § 7B-1110(a) in determining that termination of respondent-father’s parental rights was in Sam’s best interests. Those other factors addressed in the court’s findings included that petitioner-mother had legal and physical custody of Sam; that petitioner-mother and Sam had a very close bond; that petitioner-mother was able to meet all of Sam’s needs and provided him a stable environment; that there was no bond or parent-child relationship between Sam and respondent-father; that petitioner-mother’s significant other had taken on a fatherly role for Sam, was actively involved in his care, and filled in the gaps left by respondent-father’s absence; that Sam was six years old and in need of consistency and stability; and that termination of respondent-father’s parental rights would allow Sam’s well-being to continue without further disruption and provide permanence.

Besides challenging the findings regarding the likelihood of adoption, respondent-father does not address the trial court’s findings on the other relevant factors. He instead argues additional considerations—such as Sam being left without a legal father, the possibility that Sam loses his right of inheritance, and the severance of a legal relationship with paternal family—weighed against terminating his parental rights. However, a review of the trial court’s findings demonstrate that

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the trial court performed an analysis of the relevant factors in N.C. Gen. Stat. § 7B-1110(a) and determined termination of respondent-father's parental rights was in Sam's best interest given that petitioner-mother was able to meet Sam's needs, there was no bond between Sam and respondent-father, and Sam was in need of consistency and stability without further disruption. *See In re C.J.C.*, 374 N.C. at 49–50, 839 S.E.2d at 747–48 (holding the trial court's best interest determination was neither arbitrary nor manifestly unsupported by reason where the court's findings established the young child had no bond with the respondent, the child was in need of consistency, and the respondent was not involved with the child). Accordingly, we cannot say the trial court abused its discretion, and we affirm the court's best interests determination.

IV. Conclusion

Since respondent-father does not challenge the trial court's adjudication of the existence of grounds to terminate his parental rights, and because the trial court did not abuse its discretion in determining termination of respondent-father's parental rights was in Sam's best interests, we affirm the termination order.

AFFIRMED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).