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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-894

Filed 7 May 2024

Wake County, Nos. 15 JT 120, 122

IN THE MATTER OF: C.D.G., H.J.G.

Appeal by Respondent from an order entered 8 June 2023 by Judge Ashleigh P. Dunston in Wake County District Court. Heard in the Court of Appeals 3 April 2024.

Wake County Attorney's Office, by Mary Boyce Wells, for Wake County Department of Health and Human Services; and TLG Law, by Ty K. McTier, for the Guardian ad Litem, Petitioners-Appellees.

Mercedes O. Chut, for the Respondent-Appellant Mother.

WOOD, Judge.

Respondent-mother (“Mother”) appeals from the trial court’s order terminating her parental rights to her children contending that termination was not in the children’s best interest. Father is not a party to this appeal. After careful review, we affirm the trial court’s order.

I. Factual and Procedural Background

Mother and Father have four children, namely: Hannah, born on 30 August 2010; Claire, born on 24 November 2012; Charles, Claire's twin brother, also born on 24 November 2012; and Leah, born on 19 September 2013.¹ Mother and Father lived in New Jersey with their children when New Jersey child protective services ("CPS") first became involved. CPS' involvement began due to Mother and Father's unstable housing conditions and their lack of financial ability to care for the children. In October 2014, during CPS' pending investigation, Mother and Father moved to Wake County with their children to live with Father's mother ("Grandmother"). Subsequently, CPS requested assistance from the Wake County Department of Health and Human Services ("WCHS"). Mother and Father indicated to WCHS that their living arrangements with Grandmother were likely permanent; consequently, CPS closed their case.

On 17 December 2014, WCHS received a report alleging that Mother had hit the children with an open hand and a closed fist, pulled their hair, and yelled and cursed at the children. The following day, WCHS initiated an investigation of Mother and Father's home. Within a few days of the commencement of the investigation, Mother and Father informed WCHS they were moving back to New Jersey to find housing and employment and the children would remain in North Carolina with Grandmother as a short-term arrangement. Four months later, Mother and Father

¹ Pseudonyms have been used to protect the juvenile's identity. Only Hannah and Claire are the subjects of this appeal.

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still had not returned to retrieve the children, had not contacted the children, and had only provided \$90.00 of support to Grandmother, despite receiving \$400.00 per month in annuity payments and at least a \$2,800.00 tax refund.

On 24 April 2015, WCHS filed a juvenile petition alleging the children were neglected and obtained a nonsecure custody order granting WCHS custody of the children. An adjudication hearing was held on 12 June 2015 wherein the children were adjudicated neglected. The disposition hearing was held the same day, and the children remained in the custody of WCHS with placement with Grandmother. The parents were ordered to enter into a case plan with WCHS, which included the following: participate in supervised visitation at a minimum of one hour per week; obtain and maintain safe and stable housing; obtain and maintain stable employment to meet their needs and those of the children; complete a psychological evaluation and follow respective recommendations; complete a parenting education program and demonstrate the learned skills during interactions with the children; and maintain regular contact with WCHS.

A permanency review hearing was held on 9 September 2015, and the court found Mother and Father had still not visited the children since leaving North Carolina in 2014 and neither parent had complied with any ordered services or treatment. At the permanency review hearing on 7 March 2016, the trial court suspended Mother's visitation after determining that, despite her completion of parenting classes and the psychological evaluation, "[her] complete and utter absence

from the lives of [her] children in more than [twelve] months demonstrates that [she] continued to possess very poor parenting skills.” The trial court granted guardianship of the children to Grandmother. The trial court released the parents’ attorneys, WCHS, and the children’s guardian ad litem from further responsibility and waived further review hearings.

Subsequently, Hannah and Claire began to exhibit more intense mental health and behavioral issues and were placed in therapeutic foster homes. However, their therapeutic foster homes requested they be moved. On 8 April 2021 and 17 May 2021, Grandmother filed *pro se* motions for review, seeking to terminate guardianship of Hannah and Claire due to Grandmother’s concern for her and the other siblings’ health and safety. On 10 June 2021, the trial court held a hearing on the motions, at that time both Hannah and Claire were in a psychiatric residential treatment facility through Alexander Youth Network. The trial court determined it was in the best interests of Hannah and Claire to terminate Grandmother’s guardianship and to place them in the custody of WCHS. At Alexander Youth Network, Hannah was diagnosed with Post Traumatic Stress Disorder, ADHD, and Oppositional Defiant Disorder, and was prescribed three psychiatric medications. Claire was diagnosed with ADHD, anxiety, depression, and showed symptoms of stress trauma, and was also prescribed psychiatric medications.

As of the June hearing, Mother continued to reside in New Jersey with her sister and had not filed a motion to reinstate her visitation nor had any contact with

the children since 2015. However, she reported employment beginning in May of 2021 and was on a housing authority waitlist for a two-bedroom apartment. At the next hearing on 1 December 2021, the trial court determined Mother's visitation should remain suspended and that continued refusal to participate in the case plan may cease reunification efforts. At the time of the hearing, Hannah and Claire lived in separate foster care homes and maintained contact with their Grandmother and siblings, but not one another. Their separation was due to a psychological evaluation recommendation that advised they live apart because of "concerns with manipulative behavior" and "concerns with some inappropriate sexualized behavior." Hannah showed improvement in her mental health, behaved well in her placement, and indicated she had no interest in her biological family. However, Claire exhibited extreme and violent behavior toward her foster parent, which involved law enforcement on several occasions.

At the 18 May 2022 permanency planning hearing, the trial court found Mother had made some progress on her case plan, was cooperating with WCHS, and was still residing with her sister in New Jersey. The trial court continued the primary plan of reunification and the secondary plan of adoption. At the 7 November 2022 permanency planning hearing, the trial court found Mother had discontinued her participation in mental health services, had moved locations and jobs frequently, was unemployed, was barely meeting her own minimal needs, and was minimally cooperating with WCHS, the GAL, and the Court. Additionally, the trial court found

Hannah and Claire were doing well in their current placements. The trial court concluded a primary plan of adoption, and a secondary plan of reunification was in the best interests of the children.

On 12 December 2022, WCHS filed a motion to terminate Mother and Father's parental rights. The termination hearing was held on 8 May 2023. At the adjudication phase of the hearing, the trial court found Mother had not seen either child since December 2014, had never established appropriate housing, had the ability to obtain employment but the longest she had been employed was five months, had participated in two therapy sessions but had never completed an updated psychological evaluation, and displayed minimal understanding from a completed parenting education program. Mother did not make reasonable progress other than her participation in a few phone calls with Hannah's therapist, one therapy session with Hannah, and one therapy session with Claire. Accordingly, the trial court found sufficient grounds existed to terminate Mother and Father's parental rights on the grounds of neglect and of willfully leaving the children in foster care for more than twelve months without making adequate progress toward reunification.

Moving to disposition, the trial court concluded it was in Hannah and Claire's best interests that Mother and Father's parental rights be terminated. The court reasoned both children have mental health needs that require a significant amount of attention, the bond between the parents and the children is "negative" as they have not had meaningful contact since 2014, the children are unwilling to discuss their

parents, both children have succeeded and improved in their placement, and the circumstances of the parents had not improved in the eight to nine years since the children were removed. Mother filed timely notice of appeal on 8 July 2023.

II. Analysis

On appeal, Mother challenges the disposition portion of the termination order, arguing that the trial court improperly found it was in Hannah and Claire's best interests for her parental rights to be terminated. We note that Mother does not challenge the trial court's determination that grounds existed to terminate her parental rights; as such, that argument is abandoned on appeal. *In re E.S.*, 378 N.C. 8, 9, 859 S.E.2d 185, 187 (2021) (citation omitted).

A. Standard of Review

A termination of parental rights proceeding is a two-step process with an adjudicatory stage and a dispositional stage. *In re A.R.A.*, 373 N.C. 190, 194, 835 S.E.2d 417, 420 (2019) (citation omitted). If a trial court adjudicates one or more grounds for terminating parental rights, it proceeds to the dispositional phase where it "shall determine whether terminating the parent's rights is in the juvenile's best interest" and shall consider the following factors:

- (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). The trial court shall make written findings of fact as to those factors which are relevant to its determination. *Id.* The best interest of the child determination “is reviewed solely for abuse of discretion.” *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019) (citations omitted). Under abuse of discretion, a trial court’s determination will only be reversed if “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 6-7, 832 S.E.2d at 700-01 (citations omitted).

On appeal, we review the trial court’s “dispositional findings of fact to determine whether they are supported by competent evidence.” *In re J.J.B.*, 374 N.C. 787, 793, 845 S.E.2d 1, 5 (2020) (citation omitted). Unchallenged dispositional findings of fact are binding on appeal. *Id.* (citation omitted). Further, the trial court’s findings of fact “are conclusive on appeal when supported by any competent evidence, even if the evidence could sustain contrary findings.” *In re C.M.*, 273 N.C. App. 427, 430, 848 S.E.2d 749, 752 (2020) (citation omitted).

B. Challenged Findings of Fact

Mother challenges findings of fact 46, 55, 56, 58, and 61, which state:

46. The primary plan for the children is adoption. Termination of the parental rights of the parents aids in accomplishing that plan.

55. The plan of adoption affords the children the

prospect of a stable future.

56. Both of the children desire to be adopted.

58. The probability of the children being successfully adopted is greater than the chance of them successfully reunifying with either parent.

61. The minor children are in need of a permanent plan, of care at the earliest possible age which can be obtained only by the severing of the relationship between the children and their parents by termination of the parental rights of the parents.

Mother argues finding of fact 56 is not supported by competent evidence. She contends the social worker's testimony revealed that the children knew of the plan of adoption, but asking Hannah whether she *wanted* to be adopted, did not elicit a positive or negative response. In support, Mother argues that the GAL report states, "this GAL has not spoken to [Hannah] nor [Claire] about adoption." Further, Mother contends the record contains no evidence of Claire's feelings about adoption. Additionally, Mother argues the remaining facts are erroneous as, "the likelihood that either child will be adopted was only conjecture given the evidence presented." She argues "neither [the social worker] nor the GAL testified adoption was likely[,]" and the testimony merely indicated the children were "adoptable." In support, Mother offered evidence of Hannah and Claire's behavioral and mental health issues, claiming any prospective adoptive placement would have to consider their need for "a significant amount of attention," thereby rendering the children unlikely to be adopted.

Based upon our review of the record, there is ample evidence which supports the trial court's findings. As a threshold matter, the record reflects that the primary plan was adoption, and termination of parental rights would aid in accomplishing the plan of adoption. The primary plan for the children had been adoption since the hearing on 7 November 2022. At trial, the social worker and GAL presented testimony supporting this finding. The GAL further testified that termination is in the children's best interest as the GAL "do[esn't] see a future between [the children] and their parents, seeing the lack of interest and pursuit of involvement with the children at this present time."

The findings concerning Hannah and Claire's likelihood of being adopted are also supported by competent evidence. We note, "the trial court need not find a likelihood of adoption in order to terminate parental rights." *In re C.B.*, 375 N.C. 556, 561, 850 S.E.2d 324, 328 (2020) (citation omitted). As this Court previously held, "the absence of an adoptive placement for a juvenile at the time of the termination hearing is not a bar to terminating parental rights." *In re A.R.A.*, 373 N.C. at 200, 835 S.E.2d at 424 (2019) (citation omitted). The social worker acknowledged that neither foster parent was "totally on board [with] adoption" and it was possible both children could stay in the foster care system. However, she also testified the children were adoptable and have attributes that make them adoptable. The GAL also expressed that the children developed a good relationship with their placement, and they were adoptable, even if not adopted by their current placement. This testimony supports

the trial court's finding that adoption is likely, as Hannah and Claire exhibit attributes that make them adoptable, and the social worker was still exploring the option of adoption with their current placement.

Mother also points to Hannah and Claire's history of severe behavioral issues, long-term mental health issues, and need for a placement with no other children as a barrier to adoption. However, this claim is without merit. The trial court, at length, acknowledged the children's mental health and behavioral needs. The social worker additionally testified adoption would provide stability and "[WCHS] would be confident that [in an adoptive home] they would continue to receive their mental health services, which have been very important in helping them make [the] progress that they have made to this point." While both Hannah and Claire had been in multiple placements due to their behaviors, the social worker testified "both children made improvement in different areas" and "[t]here's things that both children are still working on, but they've both made progress." As stated above, the likelihood of adoption is not a necessary requirement, and the trial court's findings are supported by the evidence, even though "no witness attempted to quantify the likelihood that [the] children would be adopted with mathematical precision." *In re I.N.C.*, 374 N.C. 542, 549, 843 S.E.2d 214, 219 (2020).

Lastly, Mother argues that since Hannah and Claire are now over the age of twelve, the children must consent to adoption unless the court rules that adoption is in their best interest despite objections. N.C. Gen. Stat. §§ 48-3-601(b), 603(b). In

furtherance, Mother points to the lack of evidence concerning the children's desire to be adopted. This argument is unpersuasive. It is well settled that "while the trial court is entitled to consider the children's wishes in determining whether termination of their parents' parental rights would be appropriate, their preferences are not controlling." *In re M.A.*, 374 N.C. 865, 879, 844 S.E.2d 916, 926-27 (2020) (citation omitted). Likewise, "[t]he expressed wish of a child . . . is . . . never controlling upon the court, since the court must yield in all cases to what it considers to be for the child's best interests, regardless of the child's personal preference." *Clark v. Clark*, 294 N.C. 554, 577, 243 S.E.2d 129, 142 (1978). We hold that these respective findings are supported by competent evidence, as it is within the trial court's discretion "to weigh the various competing factors . . . in arriving at its determination of the child's best interests." *In re N.C.E.*, 379 N.C. 283, 293, 864 S.E.2d 293, 301 (2021) (citations omitted). Next, Mother challenges findings of fact 29, 31, 32, and 48, which state:

29. Respondent-Mother did participate in a couple phone calls with Hannah's therapist and one session involving Hannah. The therapist recommended that Respondent-Mother provide her with some photographs for Hannah, Respondent Mother did not fulfill this request, citing a problem with her phone.

31. Claire is diagnosed with ADHD, PTSD, and ODD. When she returned to the legal custody of WCHHS, she was already placed in a PRTF to address the severity of her mental health needs. Upon her discharge from the PRTF, she was placed in a foster home and was provided with out-patient therapy. Her behavioral issues escalated rapidly, and intensive in-home therapy was put in place. The intensive in-home therapist reached out to Respondent-

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Mother, who participated in one session with Claire. Respondent-Mother provided some photographs. Claire has since stepped back down to outpatient therapy. There have been several changes in the out-patient provider. The focus of the therapists has been to assist Claire with addressing her own issues.

32. Both of the children avoid discussions about their parents.

48. Any bond the children have with either parent is greatly diminished, or nonexistent, as they have not had meaningful contact with either parent since 2014. The nature of any remaining bond is negative, in that the children are unwilling or uninterested in even discussing their parents.

These findings concern Mother's communications with Hannah, Claire, and the children's therapists, which are generally considered when analyzing the bond between the child and parent. "[T]he trial court adequately addresses the parent-child bond when it found 'that any previous bond or relationship with the [respondent parent i]s outweighed by [the child's] need for permanence.'" *In re C.S.* 380 N.C. 709, 715, 869 S.E.2d 650, 655 (2022) (citation omitted).

Here, Mother testified she had not seen her children since 2014, as she did not have the means to travel between New Jersey and North Carolina. Further, irrespective of the exact amount of communication between Mother, her children, and their therapists, the contact was described as "minimal." Similarly, the GAL testified neither child has a bond with Mother. The social worker also testified "[Hannah and Claire are] both avoiding any discussions regarding their parents in therapy." While

Mother did participate, to some conflicting degree, in the children's therapy sessions, Mother's physical absence and lack of meaningful contact since 2014 was a sufficient basis to support the challenged findings of fact.

Next, Mother challenges findings of fact 42, 57, and 59, which state:

42. Neither parent has made sufficient effort or progress to warrant lifting the suspension of their visitation.

57. The circumstances of the parents have not improved in the 8-9 years since the children were removed from their care.

59. The conduct of the parents has been such as to demonstrate that they will not promote the healthy and orderly, physical and emotional well-being of the children.

In support, Mother offers her commitment to the children through her participation in the case plan as of 2021. Additionally, she contends her visitation did not remain suspended because of lack of progress in her case plan, rather it was due to a recommendation by the children's therapists. However, there is ample evidence in the record that Mother's participation in the children's therapy and the amount of communication between Mother, her children, and their therapists was "minimal." Further, "compliance with the case plan is not one of the factors the trial court is to consider in making the best interest determination." *In re Y.Y.E.T.*, 205 N.C. App. 120, 131, 695 S.E.2d 517, 524 (2010) (citation omitted). Accordingly, Mother's argument with respect to these findings is without merit. As these facts relate to Mother's commitment to her children, the trial court properly found, based on the

evidence, that the bond is “greatly diminished” or “nonexistent.” Moreover, findings of fact 57 and 59 are also supported by the evidence. The trial court could reasonably draw this conclusion based on Mother’s absence since 2014, her inability to maintain appropriate housing and employment, and overall lack of physical, financial, and emotional support.

C. “Other Relevant Evidence”

Lastly, Mother argues that under the category “other relevant evidence” the trial court abused its discretion because it failed to address Hannah’s and Claire’s bonds with their siblings, Grandmother, and one another. *See* N.C. Gen. Stat. § 7B-1110(6). Additionally, Mother cites certain evidentiary conflicts concerning adoption generally, the children’s ability to transition to adoptive homes, and how moving them from their current placement could cause regression in their behavior. Mother cites the factors considered in *In re J.A.O.*, wherein this Court reversed the trial court’s termination of parental rights order due to the behaviors of the child making it unlikely for him to be adopted, the lack of indication he would be adopted, and the failure of the trial court to weigh the familial bonds. *In re J.A.O.*, 166 N.C. App. 222, 601 S.E.2d 226 (2004). Mother contends that Hannah and Claire’s past extreme behaviors demonstrated how they could easily disrupt a placement, that there is no indication they will be adopted, and that “weighing the familial bonds offered by [Grandmother] and the siblings against the uncertainty of adoption leads to the conclusion that termination of [Mothers] parental rights was not in Hannah’s and

Claire's best interest." We are unpersuaded.

N.C. Gen. Stat. § 7B-1110(6) is a "catchall" provision, and a trial court is not required to make written findings regarding all alternatives or options it considered. *In re R.D.*, 376 N.C. 244, 257, 852 S.E.2d 117, 128 (2020). Further, "while consideration of placement alternatives and preserving family integrity is an appropriate consideration in the dispositional portion of the termination hearing, the best interests of the juveniles remain paramount." *In re A.H.F.S.*, 375 N.C. 503, 515, 850 S.E.2d 308, 318 (2020). Similarly, "the extent to which it is appropriate [to consider a relative placement is] dependent upon the extent to which the record contains evidence tending to show whether such a relative placement is, in fact, available." *In re N.C.E.*, 379 N.C. at 288, 864 S.E.2d at 298 (citation omitted).

Grandmother's guardianship was terminated on 16 August 2021, after she filed motions for review requesting her guardianship be terminated and further eliminating herself as a potential placement. Additionally, the record makes clear that Hannah and Claire were permitted to contact Grandmother and their siblings if they wished to do so, and had in fact, been doing so. The trial court also found the children desired stability and permanency and were able to participate in childhood activities in their placements, and the trial court also made specific findings as to each child's hobbies and unique personalities. The trial court also found Hannah and Claire's interactions with one another had been difficult in the past and additional time is needed before in-person contact between them would be healthy. As to their

mental health needs, the trial court found both Hannah and Claire are participating in therapy and receive medication management. These findings, as well as the testimony presented at trial, demonstrate that the court considered all relevant evidence as to the best interests of Hannah and Claire and the importance of preserving family integrity.

Finally, *In re J.A.O.* is distinguishable from the current case. In that case, this Court reversed the termination order for various reasons. First, there was a “small possibility” of adoption. Second, the child had multiple diagnoses and had been in nineteen different treatment centers due to aggressive behavior. Third, he was fourteen at the time of the hearing and had been in foster care since he was eighteen months old. Fourth, his GAL recommended against the TPR. Lastly, the mother made reasonable progress to correct the conditions which led to the initial removal. *In re J.A.O.*, 166 N.C. App. at 224, 227-28, 601 S.E.2d at 228, 230. Ultimately, this Court held, “after balancing the minimal possibilities of adoptive placement against the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring, we must conclude that termination would only cast [J.A.O.] further adrift.” *Id.* at 228, 601 S.E.2d at 230 (citation omitted).

First, as Mother concedes, Hannah and Claire do not have the same level of severity of mental health issues that J.A.O. experienced. Despite past disruptive behavioral issues, the children are now able to “communicate their needs, follow

rules, and accept redirection.” The GAL testified that both children have a good relationship with their current placement, their therapy needs are addressed, and they have developed positive relationships both at school and at home. The social worker stated, “having that stable base for them, where they will not have to worry about where they would sleep next, what they would eat, how they’d be taken care of, and all kinds of levels of instability, where they would not have to worry about that, would be important.” In contrast, Mother has been unable to provide evidence of stability and has failed to exhibit reasonable, if any at all, progress. As such, Mother does not provide a “stabilizing influence” and has not shown reasonable progress as the respondent in *J.A.O. Id.*

Second, the evidence does not support Mother’s contention concerning the uncertainty of adoption. The record and testimony presented at trial confirmed that both Hannah and Claire are adoptable, and each have attributes which make them adoptable. Further, the social worker testified, “even if an adoptive home is not available at this time and we’d have to recruit . . . having the plan of adoption would afford them that stability that we could obtain with an adoptive home.” Therefore, even if their current placements do not choose to adopt the juveniles, and even if an adoptive home is not immediately available, termination will assist in achieving a permanent plan of care at the earliest possible age. Finally, unlike *J.A.O.*, the GAL confirmed that termination of parental rights to allow for adoption was in the children’s best interests. Thus, the trial court’s dispositional findings are based upon

competent evidence and adequately address the statutory dispositional factors enumerated in N.C. Gen. Stat. § 7B-1110(a).

III. Conclusion

For the foregoing reasons, we conclude that the trial court did not abuse its discretion in concluding that the termination of Mother's parental rights would be in Hannah and Claire's best interests. Accordingly, we affirm the trial court's order terminating the parental rights of Mother.

AFFIRMED.

Judges ARROWOOD and FLOOD concur.

Report per Rule 30(e).