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NO. COA01-992

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

IN THE MATTER OF:

ISAIAH DELONE LEE | Forsyth County
No. 00 J 41

Appeal by respondent from orders entered 25 September 2000 and 10 January 2001 by Judge Roland H. Hayes in Forsyth County District Court. Heard in the Court of Appeals 24 April 2002.

Victor M. Lefkowitz, for petitioner-appellee.

The Dummit Law Firm, by Erin L. Williams, for respondent-appellant.

CAMPBELL, Judge.

Mary Shannon Wolfe-Lee ("petitioner") and Ira Delone Lee ("respondent") were married on 20 February 1993. The parties have one minor child, Isaiah Delone Lee ("Isaiah"), who was born on 3 June 1993 in the town of Mount Kisko, New York.

Throughout the parties' marriage, petitioner and Isaiah alternated between living in New York with respondent and in North Carolina with petitioner's parents. In September of 1994, while living with her parents, petitioner filed an emergency action for a restraining order against respondent and a temporary custody order. The parties later reconciled in December of 1995, at which time petitioner moved to Mexico to live with respondent while he

taught culinary courses. However, petitioner again returned to her parents' home with Isaiah in April of 1996 and subsequently filed an action for sole legal custody of the child. Pursuant to a consent order, petitioner was granted sole legal custody of Isaiah on 11 June 1996. Thereafter, the parties divorced on 10 July 1997.

Following the parties' separation and prior to their divorce, respondent only saw his son on two occasions:

> (a) On or about June 12, 1996, for a period of approximately 15 minutes after respondent picked up his automobile and prior to his return to Poughkeepsie, New York.
>
> (b) For a visit of approximately two hours on May 20, 1997, at which time the respondent and [respondent's father] had made a special trip to Winston-Salem, North Carolina, to pick up respondent's personal property which had been stored at the maternal grandparents' home.

After the parties divorced, respondent had one additional direct contact with Isaiah by means of an accidental telephone conservation on 10 January 2000 while attempting to initiate a call to the child's maternal grandmother.

Petitioner filed a summons and petition to terminate respondent's parental rights on 1 February 2000. Respondent filed his response/answer to the petition on 31 March 2000. On 26 June 2000 a hearing on the petition to terminate respondent's parental rights was held in Forsyth County District Court, Judge Roland H. Hayes ("Judge Hayes") presiding. Judge Hayes entered an adjudicatory order on 25 September 2000 concluding:

> That the petitioner [was] entitled to a dispositional hearing based upon respondent father's parental rights being terminated pursuant to N.C.G.S. 7B-1111(a)(1) in that

> respondent father has neglected his minor child and [pursuant to] N.C.G.S. 7B-1111(a)(7) in that respondent father has wilfully abandoned his son for a period in excess of six consecutive months immediately preceding the filing of the Petition.

The dispositional hearing was also held on 25 September 2000. After considering all the evidence, particularly the testimony and report presented by the Guardian Ad Litem, Robin J. Stinson ("GAL Stinson"), the court ordered respondent's rights terminated on 10 January 2001. Respondent appeals the adjudicatory and disposition orders.

Respondent presents nine assignments of error. His sixth, seventh, and eighth assignments of error are deemed abandoned because respondent failed to cite any authority supporting them. *See* N.C. R. App. P. Rule 28(b)(5). Respondent's remaining assigned errors present this Court with two issues: (I) whether there was clear, cogent, and convincing evidence to support several of the trial court's findings of fact and conclusions of law in favor of terminating respondent's parental rights on the grounds of neglect and abandonment; and (II) whether termination of respondent's parental rights was in the best interests of the child. We conclude that the trial court's orders should be affirmed.

Adjudication and disposition are the two stages involved in a petition to terminate parental rights. At the adjudication stage, the petitioner has the burden of proving that there is clear, cogent, and convincing evidence supporting at least one statutory ground for termination. *In re McMillon*, 143 N.C. App. 402, 408, 546 S.E.2d 169, 173-74, *disc. review denied*, 354 N.C. 218, 554

S.E.2d 341 (2001). Upon finding such a ground, the trial court proceeds to the disposition stage to determine whether it is in the best interests of the child to terminate parental rights. *Id.* at 408, 546 S.E.2d at 174. On appeal from an order terminating parental rights, this Court reviews whether the trial court's findings of fact are supported by clear, cogent and convincing evidence, and whether those findings support the court's conclusions of law. *Id.* If the termination is supported by such evidence, the trial court's findings are binding on appeal, even if there is evidence to the contrary. *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988) (citation omitted).

I.

The first issue presented to this Court is whether the trial court had clear, cogent, and convincing evidence to justify termination of respondent's parental rights on the grounds of (A) neglect and (B) abandonment.

A. *Neglect*

Pursuant to Section 7B-1111(a)(1), a court may terminate parental rights upon a finding that the parent has neglected his or her child. *See* N.C. Gen. Stat. § 7B-1111(a)(1) (2001). Our statutes define a "neglected juvenile" as:

> A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or *who has been abandoned*; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or

> adoption in violation of the law. . . .

§ 7B-101(15) (emphasis added). A child has been abandoned (and is thus a "neglected juvenile") "'if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance . . . .'" *In Re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982) (quoting *In re Cardo*, 41 N.C. App. 503, 507-08, 255 S.E.2d 440, 443 (1979)).

Additionally, our Supreme Court has held that:

> [E]vidence of neglect by a parent prior to losing custody of a child - including an adjudication of such neglect - is admissible in subsequent proceedings to terminate parental rights. The trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect.

In re Ballard, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984) (citation omitted). "The trial court's order must reflect that the termination of parental rights for neglect was based on an independent determination of existing neglect or a determination that conditions exist which will in all probability precipitate a repetition of neglect." *In re Stewart Children*, 82 N.C. App. 651, 654, 347 S.E.2d 495, 497 (1986).

In the case *sub judice*, respondent assigns error to the following findings of fact made in the court's adjudicatory order set forth respectively as respondent's first, second, and fourth assignments of error:

> (8) The respondent father has had one additional contact with the minor child, a telephone call of short duration (15 to 30

> seconds) which took place[] on or about January 10, 2000, at which time respondent had initiated a telephone call to talk with the maternal grandmother and, by chance, the child was sick and home from school and being cared for by the maternal grandmother.
>
> . . . .
>
> (12) From the testimony presented, the Court finds by clear, cogent, and convincing evidence that the respondent father has neglected the minor child in that, in addition to failing to provide for any of his physical necessities, he has failed to provide any meaningful contact, love, or affection.
>
> . . . .
>
> (14) Respondent has had the ability to contact his son by mail and telephone and the Court finds that he has not made any real effort to do so. The Court further finds that respondent's conduct constitutes neglect as well as abandonment and, although respondent has expressed thoughts about the concern for his son, his actions indicate to the contrary.

Respondent also assigns error to the following conclusion of law found in the order set forth in respondent's brief as his fifth assignment of error:

> (3) That the petitioner is entitled to a dispositional hearing based upon respondent father's parental rights being terminated pursuant to N.C.G.S. 7B-1111(a)(1) in that respondent father has neglected his minor child and N.C.G.S. 7B-1111(a)(7) in that respondent father has wilfully abandoned his son for a period in excess of six consecutive months immediately preceding the filing of the Petition.

We conclude there was clear, cogent, and convincing evidence upon which these findings of fact and the conclusion of law were based.

Here, the record provides overwhelming evidence of respondent's failure to have any meaningful relationship with his

son over the nearly four-year period prior to this action. Respondent did not pay any child support to petitioner after June of 1996 and made no attempt to make payment until after the filing of the petition. Respondent last saw his son in May of 1997. He has only had one telephone conversation with Isaiah since July of 1997, preferring instead, to communicate with the maternal grandparents about the child on the extremely rare occasions when he did call. With respect to telephone contact, respondent argues that he aggressively tried to call Isaiah three times in January of 2000, but his attempts were "frustrated" because the maternal grandparents hung up on him. However, assuming respondent's argument is true, he admittedly made no alternative attempts to contact the child by calling petitioner, by visiting the child, or at the very least, by mailing Isaiah a letter. The findings of fact in the court's order further summarized this evidence as follows:

> (9) Since the date of the parties' separation on or about April 5, 1996, until the date of the filing of the Petition, respondent father has:
>
> (a) Not had any telephone contact with the minor child (other than the 15 to 30 second telephone conversation on January 10, 2000). The telephone number of maternal grandparents has been the same number for more than 15 years and the respondent has had that number since prior to marriage to the petitioner. Although petitioner's telephone number was unlisted at the time she moved into her own residence, respondent's relatives (mother and two sisters) personally spoke with the petitioner on several occasions inquiring about the welfare of the minor child and they each had petitioner's telephone number.
>
> (b) Not paid any child support to or for

> the benefit of the minor child.
>
> (c) Not sent any letters to the minor child.
>
> (d) Not sent any gifts to the minor child.
>
> (e) Not sent any cards to the minor child.
>
> (f) Not had any contact with the petitioner, either in person, by telephone, or by letter, although knowing the petitioner's residence and/or having the ability to obtain that information had he chosen to do so.
>
> (10) Respondent, in his own words, is an able-bodied individual, in good health, who . . . is a graduate of the Culinary Arts School in New York and was under contract to teach cooking in Mexico for a period of years. Upon returning to the United States in 1998, (other than his brief returns during the Summer months during school recess in 1996, 1997, and 1998), he has been working as a chef in the State of New York at various restaurants. Respondent has had an automobile, drivers license, and has had no physical impairments which would have precluded him from traveling to North Carolina to visit with his son. . . .

The court also found that "the parties lived separate and apart for longer than they lived together and, based upon a review of the Court files, that the total time respondent lived with his son from birth until the filing of the termination of parental rights actions was 10 months and 2 weeks out of a total of 80 months." Respondent does not take exception to any of these findings of fact made by the court.

The continued and prolonged absence of respondent's presence, love, care, affection, and maintenance, particularly during the formative years of Isaiah's life, support the court's conclusion that respondent neglected his son. Therefore, the court's findings

and conclusions on the grounds of neglect are binding on appeal.

B. *Abandonment*

Respondent also argues the trial court did not have clear, cogent, and convincing evidence to conclude his parental rights should be terminated pursuant to Section 7B-1111(a)(7) because he did not *willfully* abandon Isaiah for "at least six consecutive months immediately preceding the filing of the petition or motion . . . ." N.C. Gen. Stat. § 7B-1111(a)(7) (2001). However, this Court has held that "[a] valid finding on one statutorily enumerated ground is sufficient to support an order terminating parental rights." *In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986) (citing *In re Pierce*, 67 N.C. App. 257, 312 S.E.2d 900 (1984)). Since we have determined the trial court's findings support termination of respondent's parental rights on grounds of neglect, "we need not address the respondent's assignments of error challenging the sufficiency of the evidence to terminate, based on other statutory grounds." *Id.* Nevertheless, we note that many of the findings of fact addressed in our review of the court's termination on neglect grounds are applicable to and support the court's termination on abandonment grounds as well.

II.

The second issue raised by respondent is whether the trial court erred when it concluded in its disposition order that it was

in Isaiah’s best interests to terminate respondent’s parental rights. We find no error.

Our statutes provide that even when the trial court finds one or more grounds exist authorizing the termination of parental rights, the court shall not issue an order terminating parental rights if it determines that it would not be in the best interests of the child. *See* § 7B-1110(a). In the instant case, respondent argues it would not be in Isaiah’s best interests to terminate his parental rights. Respondent supports his argument by directing this Court’s attention to the testimony of Dr. Thomas Holm (“Dr. Holm”), a clinical psychology expert. Dr. Holm testified that it would not be in the best interests of the minor child for respondent’s parental rights to be terminated because respondent has “matured and prepared himself to meet the challenges that would lie ahead [if given] the opportunity to develop a relationship with his son.” However, Dr. Holm’s opinion was based solely upon a review of the pleadings, the materials respondent submitted to GAL Stinson, and a forty-minute meeting with the respondent prior to the disposition hearing. During that meeting, respondent’s only explanation to Dr. Holm as to why he had not contacted his son in several years was because he was upset when petitioner abruptly left their marriage.

The trial court obviously considered GAL Stinson’s evaluation of this matter to be a greater indicator of the child’s best interests than Dr. Holm’s forty-minute meeting. As the court-appointed Guardian Ad Litem, GAL Stinson reviewed the court records

and Isaiah's school records, reviewed recommendations provided by employers and friends of the parties, and had meetings with Isaiah, petitioner, and respondent. The court made numerous findings of fact in its disposition order based upon GAL Stinson's activities, which established that: (1) Isaiah is a happy, well-adjusted child with strong ties to his maternal family; (2) Isaiah has no independent recollection of his father (aside from their brief visit in May of 1997) and made no mention of respondent or respondent's family until prompted by the Guardian Ad Litem; (3) petitioner is an excellent single mother and provides a wholesome environment for Isaiah; and (4) respondent acknowledged "his inability to form lasting relationships outside of work and that he rarely spoke with his family[.]" GAL Stinson ultimately concluded that, in her opinion:

> The court cannot be sure that, should the petition be denied, that Respondent would not withdraw from future contact with his son due to the future personal pain or depression. Such an interruption to a seven-year-old child, who has no current memory of his father, would be very painful to the child and disruptive to his emotional well being. Therefore, there are no good grounds to base a denial of the petition to terminate.

Based on the foregoing findings, coupled with the evidence establishing years of neglect and the probability of its repetition, we cannot find that the trial court erred in concluding that it was in the child's best interests to terminate respondent's parental rights.

Accordingly, for the aforementioned reasons, we conclude that there was clear, cogent, and convincing evidence to support the

trial court’s termination of respondent’s parental rights to Isaiah and that it was in the minor child’s best interests to do so.

Affirmed.

Judges WALKER and McGEE concur.

Report per Rule 30(e).