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NO. COA11-197
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

IN RE:

B.K.B.P.

Cumberland County
No. 10 JT 179

Appeal by respondent-father from order entered 10 November 2010 by Judge A. Elizabeth Keever in Cumberland County District Court. Heard in the Court of Appeals 29 August 2011.

Susan J. Hall, for petitioner-appellee mother.

Ryan McKaig, for respondent-appellant father.

MARTIN, Chief Judge.

Respondent appeals from the trial court's order terminating his parental rights as the father of the minor child, B.K.B.P., based on the ground of willful abandonment. After careful consideration, we affirm.

The minor child's mother ("petitioner") initiated proceedings to terminate respondent's parental rights by filing a juvenile petition on 31 March 2010 alleging abandonment of the

child and failure to pay child support. The petition alleged that respondent had not had any contact with B.K.B.P. since approximately July 2004, and had not sent any gifts, cards, or support for him since 2004.

The matter came on for hearing on 14 and 15 September 2010. After hearing evidence in the adjudication phase of the hearing, the trial court found by clear, cogent, and convincing evidence that respondent willfully abandoned B.K.B.P. The court did not find that respondent failed to provide child support. The trial court then determined that termination of respondent's parental rights is in the best interests of B.K.B.P., and ordered that respondent's rights be terminated.

Respondent challenges the trial court's conclusion that he willfully abandoned B.K.B.P. as being unsupported by the evidence. In reviewing the court's order, we follow the following principles:

The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law. We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.

In re Shepard, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (citation and internal quotation marks omitted), *disc. review denied*, 358 N.C. 543, 599 S.E.2d 42 (2004).

Termination of parental rights may be based on a finding that a "parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion." N.C. Gen. Stat. § 7B-1111(a)(7) (2009). "Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child." *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986). Willfulness denotes more than just intent; "there must also be purpose and deliberation." *Id.* "Whether a biological parent has a willful intent to abandon his child is a question of fact to be determined from the evidence." *Id.* at 276, 346 S.E.2d at 514.

The trial court made the following unchallenged findings of fact: at the time the child was born, the parties were living together in respondent's mother's house in Iowa, and respondent continued to assist with caring for the child after petitioner and the child moved out. The parties ended their relationship in the latter half of 2003, and petitioner began a relationship with her current husband ("petitioner's husband"), who was known

to respondent. Petitioner's husband eventually joined the Air Force. Respondent continued to visit with the child and to provide some financial support at the end of 2003 into the beginning of 2004. Petitioner notified respondent that she and her husband would be moving, first to a temporary location, and then to another location after that. She did not give respondent a date, nor did she provide respondent with a new address. After petitioner moved out of Iowa, respondent filed a missing person's report with the police. Through that action, contact was made with petitioner's husband's parents, and respondent discovered petitioner had moved to Texas.

The trial court then found:

17. That Respondent did not follow up with [petitioner's husband's] parents. That Respondent attempted to make phone calls to the Petitioner. That the paternal grandmother, in trying to assist Respondent in locating the minor child, obtained from the local post office the Texas address for Petitioner through a former address forwarding service. That at that time they stopped looking for the minor child.
18. They made no attempt to obtain a forwarding address from the Texas post office; they made no attempt to contact the Petitioner's relatives in Iowa; they made no attempt to contact [petitioner's husband's] relatives in Iowa; they made no attempts when the Respondent joined the United States Military to try to locate [petitioner's husband] through the United States

Military. They made no attempt in any other manner to try to locate the Petitioner and minor child.

Based on its findings of fact, the trial court concluded that respondent willfully abandoned B.K.B.P.

Respondent contests Findings of Fact 17 and 18 as being unsupported by the evidence, although he does not specify which parts of the findings are inaccurate. He simply contends there was insufficient evidence that he stopped looking for B.K.B.P. Respondent also asserts that petitioner concealed B.K.B.P. from him and that he had no knowledge of the child's whereabouts. He notes that when he discovered petitioner had a Facebook account in February 2010, he sent a message to petitioner asking about the child and expressing his desire to be involved in the child's life. Respondent contends abandonment cannot be a ground for termination because he made sincere efforts to resume contact with the child and demonstrated his intent to be reunited with his son. Further, he notes that he contacted petitioner during the six-month period immediately preceding the filing of the termination petition, thereby undermining an essential element of that ground. We are not persuaded by these contentions.

First, we conclude that Findings of Fact 17 and 18 are supported by evidence presented at the hearing. Petitioner

testified that her husband called respondent with their phone number when they moved to Texas, but respondent did not make any contact while they lived there. She did receive one letter from respondent's mother referencing a money matter and stating that respondent had a right to see his son, but received no further correspondence after that from either respondent or his mother. In November 2004, petitioner and her husband moved from Texas to North Carolina. Petitioner stated that from July 2004 to early 2010, she did not hear from respondent until he contacted her through Facebook in February 2010. She had not received any gifts for the minor child nor any type of support from respondent since the summer of 2004.

Respondent stated that he tried calling petitioner in Texas several times, but he did not hear back. He did not pursue legal action because he did not have any money. Nor did he hire a private detective, although he stated he did search extensively, including on the internet and in phone books. On cross-examination, he was asked whether he tried to use military resources to locate petitioner's husband since they were both active members. Respondent stated at first that he was not aware of what resources were available to him, but then stated that he asked for help but received no assistance. He did not seek advice from legal resources in the military. When asked

about other sources of obtaining contact information for petitioner or the minor child, respondent replied, "I didn't know I was supposed to track her down." He admitted that he knew petitioner would be in Texas for a short time and that he received a phone call from petitioner's husband but did not ask for an address. He acknowledged that his mother had the Texas address.

Respondent's mother testified that she knew petitioner would be leaving Iowa because of petitioner's relationship with her then-fiancé. When she found out they moved to Texas, respondent's mother tried calling several times, and then got an address through a forwarding request and sent a letter to petitioner. She also called petitioner's husband's grandmother in Iowa. However, respondent's mother made no attempt to follow up after the one letter, and did not attempt to get a new address after petitioner left Texas. Based on this evidence, the trial court's Findings of Fact 17 and 18 are amply supported.

We also find that the findings of fact fully support the trial court's conclusion that respondent willfully abandoned B.K.B.P. for at least six months prior to the filing of the termination petition pursuant to N.C.G.S. § 7B-1111(a)(7). The findings indicate that respondent had several avenues for

pursuing contact with petitioner and B.K.B.P. and did not contact her or provide any support after mid-2004. The evidence shows that respondent did make contact via Facebook in February 2010. He wrote at that time that he "want[ed] to know how [B.K.B.P.] is and him to know that [respondent] exist[ed]," that he "would love nothing more to [sic] come into [B.K.B.P.'s] life and be an active part in it," and that he would like "some pictures, detailed descriptions of him and his life, like his school and interests," and to talk to him on the phone "only when [B.K.B.P.] is ready."

However, one contact within six months of the filing of the petition is insufficient to overcome respondent's five-and-a-half-year history of failing to pursue his parental claims and offer parental support and love. Respondent failed to avail himself of many possible avenues to locate and contact petitioner and B.K.B.P. and assert his parental rights over many years. His one Facebook inquiry into B.K.B.P.'s well-being cannot negate a finding of willful abandonment. Accordingly, the trial court did not err in concluding that grounds exist to terminate respondent's parental rights on the basis of willful abandonment.

Next, respondent contends the trial court abused its discretion in determining that termination of his parental

rights is in B.K.B.P.'s best interests. Once the trial court determines that one of the statutory grounds for termination exists, the court proceeds to the dispositional phase to determine whether the termination of parental rights is in the best interests of the juvenile. *In re Mills*, 152 N.C. App. 1, 7, 567 S.E.2d 166, 169-70 (2002), *cert. denied*, 356 N.C. 672, 577 S.E.2d 627 (2003); see N.C. Gen. Stat. § 7B-1110 (2009). This determination is reviewed for abuse of discretion, *In re E.M.*, ___ N.C. App. ___, ___, 692 S.E.2d 629, 630, *cert. denied*, 364 N.C. 325, 700 S.E.2d 749 (2010), meaning that respondent must demonstrate that the court's ruling was "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Respondent does not meet that burden here.

"The Juvenile Code sets out several factors the trial court must consider in determining whether termination of parental rights is in the best interest of the child," *In re S.C.H.*, 199 N.C. App. 658, 666, 682 S.E.2d 469, 474 (2009), *aff'd per curiam*, 363 N.C. 828, 689 S.E.2d 858 (2010):

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental

as an emotional and physical way, which has previously occurred.

25. In considering all those factors, the Court finds its [sic] in the child's best interest that termination be granted and it is so ordered.

We find these findings of fact are supported by the evidence. A guardian *ad litem* interviewed B.K.B.P., respondent, petitioner, B.K.B.P.'s siblings, and his step-father, petitioner's husband, and shared with the court that petitioner's husband had assumed responsibility for B.K.B.P. since the child was nine months old and that this was the person who B.K.B.P. identified as his father. She also expressed her concerns "as to whether [respondent would] be a constant in [B.K.B.P.'s] life or whether future conflicts will result in additional periods of absence," and that respondent "seem[ed] more concerned with just having a connection, then [sic] in taking on the actual responsibility of visitation and support payments." Thus, the trial court did not abuse its discretion in determining that termination of respondent's parental rights is in the best interests of B.K.B.P.

Therefore, we conclude the trial court did not err in terminating respondent's parental rights.

Affirmed.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).