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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-180

Filed: 5 July 2017

Hoke County, No. 15 JT 9

IN THE MATTER OF: A.P.C.

Appeal by respondent-father from orders entered 2 December 2016 by Judge Chris Rhue in Hoke County District Court. Heard in the Court of Appeals 15 June 2017.

No brief filed for petitioner-appellee mother.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Annick Lenoir-Peek, for respondent-appellant father.

No brief filed on behalf of guardian ad litem.

ARROWOOD, Judge.

Respondent-father appeals from the trial court's orders terminating his parental rights to his daughter A.P.C. ("Amy").¹ For the following reasons, we affirm.

I. Background

¹ A pseudonym is used to protect the juvenile's privacy and for ease of reading.

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Petitioner is the biological mother of Amy, who was born in September 2005. At the time of her birth, petitioner and respondent-father were in a relationship and lived in El Paso, Texas. The parties ended their relationship in 2006, and petitioner briefly moved with Amy to North Carolina before relocating to Kentucky.

On 4 November 2009, the parties entered into a consent order in Kentucky which gave the parties joint legal custody and provided respondent-father with a phased-in visitation schedule with Amy. The order required respondent-father to have a clean hair follicle drug test before he was allowed any visitation. The Kentucky court also entered an order for child support requiring respondent-father to pay \$207.00 per month as support for Amy and establishing \$2,176.84 in arrearages to be paid at the rate of \$50.00 per month.

On 5 November 2009, while in Kentucky to visit Amy, respondent-father was arrested and pleaded guilty to driving while impaired. On 15 April 2010, the Kentucky court entered a temporary order ceasing respondent-father's visitation until he provided a clean hair follicle test. Respondent-father failed one hair follicle test and never followed up with any subsequent tests. This order was still in effect at the time of the termination hearing.

In 2010, petitioner had remarried and moved with Amy and her new husband to Tennessee. Petitioner filed an action to terminate respondent-father's parental rights in 2010, but it was dismissed in 2013 for lack of jurisdiction. Petitioner relocated to Colorado in August 2011 for four months before moving to Fort Bragg,

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North Carolina in January 2012. In June 2014, petitioner and Amy relocated to Raeford, North Carolina. Despite the multiple relocations, petitioner has maintained the same phone number she had prior to Amy's birth.

On 11 February 2016, petitioner filed a petition to terminate respondent-father's parental rights to Amy, alleging the grounds of neglect, failure to pay support, and willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (3), (7) (2015). After multiple continuances, the hearing on the petition was held on 31 October 2016. At the start of the hearing, respondent-father moved to dismiss, arguing that North Carolina lacked jurisdiction over the matter because the Kentucky court did not relinquish jurisdiction after issuing the initial custody orders. The trial court found it had jurisdiction and proceeded with the hearing.

Respondent-father testified that he had not seen Amy since 2009 and last spoke to her in early 2010. He testified that over the past ten years, he had changed his phone number at least five times, and had changed his address at least eight times, including a year of being homeless, but never updated petitioner with his current contact information. Although respondent-father testified that he was never notified of petitioner's whereabouts after she moved from Kentucky, respondent-father admitted that he knew petitioner's phone number. He testified that he had not called her since the end of 2010, because she stopped answering the phone, and that he never sent any text messages or left any voicemails asking to see Amy.

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Respondent-father also admitted that he had not provided any support for Amy over the past ten years except for a one-time payment of \$50.00 in 2009.

In orders entered 2 December 2016, the trial court concluded that grounds existed to terminate respondent-father's parental rights based on willful abandonment and that termination of respondent-father's parental rights was in Amy's best interest. Respondent-father gave notice of appeal on 29 December 2016.

II. Discussion

Respondent-father's counsel has filed a no-merit brief on his behalf pursuant to Rule 3.1(d) of the North Carolina Rules of Appellate Procedure. Counsel states that after conducting a "conscientious and thorough review of the record on appeal[,]" she has concluded "that the record contains no issue of merit on which to base an argument for relief and that the appeal would be frivolous." Respondent-father's counsel requests that this Court conduct an independent examination of the case for possible error. In accordance with Rule 3.1(d), counsel sent a letter to respondent-father on 17 February 2017 advising him of counsel's inability to find error and of his right to file his own arguments directly with this Court. Respondent-father has not filed his own written arguments and a reasonable period of time for him to have done so has passed.

Counsel directs our attention to three potential issues: (1) whether the trial court erred in concluding that it had subject matter jurisdiction under the Uniform Child Custody Jurisdiction Enforcement Act; (2) whether the trial court erred in

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concluding that respondent-father willfully abandoned Amy; and (3) whether the trial court abused its discretion in finding and concluding that it would be in Amy's best interest to terminate respondent-father's parental rights.

After carefully reviewing the transcript and record, we are unable to find any prejudicial error in the trial court's orders. At the time the petition to terminate parental rights was filed, North Carolina was the home state of the child pursuant to N.C. Gen. Stat. § 50A-201(1) (2015), and neither the child nor either parent continued to reside in Kentucky. *See* N.C. Gen. Stat. § 50A-203(2) (2015). Thus, the trial court had jurisdiction over the matter. Further, our review of the record reveals that the termination order includes sufficient findings of fact, supported by clear, cogent, and convincing evidence, to conclude that respondent-father willfully abandoned Amy for at least six consecutive months preceding the filing of the petition to terminate his parental rights. *See* N.C. Gen. Stat. § 7B-1111(a)(7). Finally, the trial court made appropriate findings in determining that termination of respondent-father's parental rights was in Amy's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2015).

III. Conclusion

The 2 December 2016 orders of the trial court are affirmed.

AFFIRMED.

Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).