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NO. COA05-1162

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

IN THE MATTER OF:

K.B.
DOB: 08/27/00

Forsyth County
No. 04 J 498

Appeal by respondent from order entered 10 May 2005 by Judge Lisa V.L. Menefee in Forsyth County District Court. Heard in the Court of Appeals 8 May 2006.

Womble Carlyle Sandridge & Rice, PLLC, by Murray C. Greason, III; John L. McGrath; Stuart L. Teeter, for petitioner-appellees Sampson County Department of Social Services and Guardian ad Litem.

M. Victoria Jayne, for respondent-appellant.

HUNTER, Judge.

Respondent appeals from the district court's order terminating her parental rights to the minor child K.B. on grounds of neglect and abandonment, as alleged in a petition filed by the Forsyth County Department of Social Services ("DSS") on 10 December 2004. Finding no error, we affirm.

Initially, we note that the Guardian ad Litem has filed a motion to dismiss respondent's appeal, arguing that respondent's assignments of error "fail to direct the attention of the appellate court to the particular error about which the question is

made[.]'" N.C.R. App. P. 10(c)(1). We disagree. The record on appeal filed by respondent contains the following two assignments of error:

1. The trial court's Findings of Fact were insufficient to support an Order to terminate [respondent]'s parental rights based on abandonment as defined by NCGS 7B-1111(a)(7).
2. The trial court's Findings of Fact were insufficient to support an Order to terminate [respondent]'s parental rights based [on] neglect as defined by NCGS 7B-1111(a)(1).

We believe these assignments of error clearly raise, and are thus sufficient to preserve, the issues of whether the facts found by the district court support its conclusions of law that grounds for termination exist under N.C. Gen. Stat. § 7B-1111(a)(1) and (7) (2005). Moreover, these issues fall squarely within the scope of appellate review from a termination of parental rights order. See generally *In re Baker*, 158 N.C. App. 491, 493, 581 S.E.2d 144, 146 (2003). Accordingly, we deny the motion to dismiss.

A proceeding to terminate parental rights is conducted in two stages. *Id.* at 493, 581 S.E.2d at 146. In the adjudication stage, the petitioner must show by clear, cogent, and convincing evidence that termination is supported by one or more of the grounds prescribed by N.C. Gen. Stat. § 7B-1111. See N.C. Gen. Stat. § 7B-1109 (2005). The standard of appellate review at the adjudication stage is whether the district court's findings of fact are supported by clear, cogent, and convincing evidence, and whether its findings of fact support its conclusions of law.

Baker, 158 N.C. App. at 493, 581 S.E.2d at 146. If the district court finds grounds for termination, it must then determine the appropriate disposition for the proceedings under N.C. Gen. Stat. § 7B-1110 (2005). At the disposition stage, the court is required to terminate the respondent's parental rights unless it determines that termination would be contrary to the best interests of the child. *In re Blackburn*, 142 N.C. App. 607, 613, 543 S.E.2d 906, 910 (2001) (citing *In re Parker*, 90 N.C. App. 423, 368 S.E.2d 879 (1988)). We review the court's disposition in a termination proceeding only for abuse of discretion. See *In re Brim*, 139 N.C. App. 733, 744, 535 S.E.2d 367, 373 (2000).

As quoted above, respondent's assignments of error address only the adjudication stage of the proceedings, challenging the court's conclusion that its findings of fact were sufficient to show grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(1) and (7). Because respondent has not assigned error to any of the court's findings of fact, they are deemed to be supported by competent evidence and are binding on appeal. *In re Beasley*, 147 N.C. App. 399, 405, 555 S.E.2d 643, 647 (2001); *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Respondent has not challenged the court's discretionary determination at the disposition stage that termination of her parental rights was in the best interest of K.B. Accordingly, our review is confined to whether the district court's findings of fact are sufficient to establish grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(1) and (7).

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(7), the district court may terminate a respondent's parental rights if "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition[.]" *Id.* When a petition seeks termination under N.C. Gen. Stat. § 7B-1111(a)(7), the trial court must examine the respondent's behavior in the six months immediately prior to the petition's filing. *In re Young*, 346 N.C. 244, 251, 485 S.E.2d 612, 616 (1997). Here, DSS filed its petition on 10 December 2004. Respondent's behavior toward K.B. between 10 June 2004 and 10 December 2004 is thus determinative on the issue of abandonment.

The termination order includes the following pertinent findings of fact:

2. K.B. was born on August 27, 2000, in Winston-Salem, Forsyth County, North Carolina. She presently resides . . . in foster care under supervision, direction and custody of the [DSS] since October 5, 2001.
- . . .
5. K.B. came into the custody of the [DSS] on October 5, 2001, largely because of issues of inappropriate supervision and domestic violence.
6. The child was adjudicated to be a neglected child pursuant to N.C.G.S. 7B-101(15) on December 5, 2001.
7. That the child continues to be neglected by the actions of the parents in that since June 1st, 2004, both Mr. B[.] and [respondent] have abandoned the child.
8. [Respondent] visited the child on June 1st, 2004.

9. On June 30, 2004, [respondent] visited with K.[B.], interacted appropriately and had a good visit.
10. Although Mr. B[.] and [respondent] appeared for a visit on July 7, 2004 and July 14, 2004, . . . visitation with the child was not a priority for either parent.
11. On July 7, 2004, the parents became involved in an altercation. The [DSS] representative tried to divide the visit between the parents until further arrangements could be made because the parents were feuding with each other. . . . Both parents had five to ten minutes with K.[B.], but neither parent showed any interest in the child.
12. On July 14, 2004, the parents caused another disruption. [Respondent] refused to arrange for visits separate from Mr. B[.]'s visits.
13. Since July 14, 2004, the parents have not had any contact with the child. In August of 2004, the parents had no contact, sent no cards, no gifts for the child's birthday, and did not visit the child. Neither parent expressed any interest in the health, welfare, and education of the child. Even during a review in court, neither parent raised any concern for the child . . . and did not even ask any questions about the child's welfare.
14. In September of 2004, [respondent] contacted Roberta Toshumba for bus passes. Ms. Toshumba reminded [respondent] about visitation with the child. Despite [this] encouragement, [respondent] had no contact with the child in September of 2004. . . .
15. In October and November of 2004, the parents had no contact with the child, and they made no inquiries regarding the child's health, education, or welfare.

16. In December of 2004, the parents had no contact with the child. Even during a review in court, the parents did not request contact with the child. They sent no gifts to the child for the holidays, sent no cards, and did not even ask questions about the child's welfare.

17. [Respondent] has had regular contact with Ms. Toshumba to request bus passes, but at no time has [respondent] expressed any interest in the child or requested visitation, even when Ms. Toshumba reminded her about visitation with the child. . . .

. . .

22. In the totality of the circumstances, the actions of the parents indicate that they have abandoned the child and continue to abandon the child in that they have shown no interest in the child, made no visits, requested no visits, sent no gifts, sent no cards, and have not inquired about the health, education, or welfare of the child since the visitation in June of 2004.

23. The parents' behavior also indicates neglect at the time of the hearing, and the parents' behavior shows a strong probability of the repetition of neglect.

. . .

28. Pursuant to N.C.G.S. 7B-1111(a)(7), the Court finds that the Respondent Mother and the Respondent Father have willfully abandoned K.B.

29. K.B. has been in the custody of [DSS] for three years and seven months at the date of this hearing.

. . .

31. K.B. has been placed with C[.A.] and N[.A.] for over three years, since January 2002.

32. K.B. is thriving in her placement with C[.A.] and N[.A.]. K.B. is bonded with the entire A[.] family.
33. Mr. B[.] and [respondent] have offered nothing to show that it is not in the best interest of K.B. to terminate [their] rights.
34. Mr. B[.] and [respondent] have by their own action terminated all indi[c]ia of love, care, and concern for the child, and have denied the child the ability to experience their love as parents since June of 2004.
35. It is in the best interest of K.B. that the parental rights of [respondent] and [Mr. B.] be terminated.

In challenging the grounds for termination based on her abandonment of K.B., see N.C. Gen. Stat. § 7B-1111(a)(7), respondent asserted that "[t]he Order contains findings that [respondent] visited [K.B.] through July 2004, less than 6 months before the petition was filed" on 10 December 2004. Therefore, she insists, "[s]ince the Order to terminate on the ground of abandonment hinges on the evidence of 'visits' the statutory 6 month requirement is not met."

We have previously defined the type of "abandonment" justifying the termination of a respondent's parental rights as follows:

""[A]bandonment imports any wil[l]ful or intentional conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child'"

"Abandonment has also been defined as wil[l]ful neglect and refusal to perform the natural and legal obligations of parental care and support. It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial

affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child. . . ."

Further, "[a]bandonment requires a willful intent to escape parental responsibility and conduct in effectuation of such intent." In this context, "[t]he word 'willful' encompasses more than an intention to do a thing; there must also be purpose and deliberation."

Bost v. Van Nortwick, 117 N.C. App. 1, 18, 449 S.E.2d 911, 921 (1994) (citations omitted). In assessing the respondent's willfulness and intent, the court must take into account "the financial support respondent has provided to the child, as well as the respondent's emotional contributions to the child" during the six-month period preceding petitioner's filing the petition to terminate parental rights. *In re McLemore*, 139 N.C. App. 426, 429, 533 S.E.2d 508, 510 (2000). "Whether a biological parent has a willful intent to abandon his child is a question of fact to be determined from the evidence." *In re Adoption of Searle*, 82 N.C. App. 273, 276, 346 S.E.2d 511, 514 (1986) (citing *Pratt v. Bishop*, 257 N.C. 486, 126 S.E.2d 597 (1962)). However, a determination that a respondent has "willfully abandoned the [child] for at least six consecutive months immediately preceding the filing of the [termination] petition[,]" within the meaning of N.C. Gen. Stat. § 7B-1111(a)(7), is a "finding and conclusion" and thus reviewable on appeal. See *In re Humphrey*, 156 N.C. App. 533, 540-41, 577 S.E.2d 421, 427 (2003).

The findings of the district court portray respondent's complete cessation of any relationship with K.B., as well as her

utter lack of interest in the child's well-being, despite "regular" contacts with DSS and her appearance in court. Other than the single visit discussed herein, respondent "show[ed] no interest in the child, made no visits, requested no visits, sent no gifts, sent no cards, and ha[s] not inquired about the health, education, or welfare of the child since the visitation in June of 2004." Viewed against these facts, respondent's one "good" visit with K.B. on 30 June 2004 does not preclude the conclusion that she willfully abandoned the child throughout the relevant six-month period between 10 June 2004 and 10 December 2004. Compare *Searle*, 82 N.C. App. at 276, 346 S.E.2d at 514 (finding that the respondent's single \$500.00 support payment during the relevant six-month period did not preclude a finding of willful abandonment) and *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982) ("except for an abandoned attempt to negotiate visitation and support, respondent 'made no other significant attempts to establish a relationship with [the child] or obtain rights of visitation with [the child]'") with *Bost*, 117 N.C. App. at 18-19, 449 S.E.2d at 921 (finding no willful abandonment where respondent, during relevant six-month period, visited children at Christmas, attended three soccer games and told mother he wanted to arrange support payments). Moreover, the fact that respondent and her husband attended a visitation on 7 July 2004 but "showed [no] interest" in K.B. and then sabotaged their last visitation with the child on 14 July 2004, in no way refutes a determination that they abandoned the child.

Respondent contends that her failure to visit, support, contact, or inquire about K.B. was due to her "frustrat[ion]" with DSS, rather than a willful abdication of her role as parent. However, the district court found that respondent acted willfully and with the requisite intent in severing all ties with the child, and we are bound by that finding. Moreover, respondent's purported frustration with DSS did not deter her from seeking bus passes from Ms. Toshumba during the relevant period. Despite maintaining these regular contacts with DSS for another purpose, at no time did respondent ask to see K.B. or so much as inquire about the child. While not strictly material to our analysis, we note that her manifest indifference toward K.B. continued up to the date of the termination hearing.

Respondent also points to the district court's findings that, at the time of the hearing, she had successfully obtained treatment for substance abuse, maintained stable housing for four years, and "provided clean and appropriate housing and care" for her infant son. While these facts show significant progress by respondent in other areas, they have little bearing upon the issue of her abandonment of K.B. Indeed, to the extent they reflect stability and consistency in other facets of respondent's life, these facts tend to support the finding that her actions toward her daughter were the product of conscious deliberation and intent, rather than circumstance.

In the context of our former adoption statute, N.C. Gen. Stat. § 48-2, the North Carolina Supreme Court directly rejected a

parent's claim that a single visit during the applicable six-month period precluded a finding of willful abandonment.

To constitute an abandonment within the meaning of the adoption statute it is not necessary that a parent absent himself continuously from the child for the specified six months, nor even that he cease to feel any concern for its interest. If his conduct over the six months period evinces a settled purpose and a wil[l]ful intent to forego all parental duties and obligations and to relinquish all parental claims to the child there has been an abandonment within the meaning of the statute.

Pratt, 257 N.C. at 503, 126 S.E.2d at 609; *cf. also In re Estate of Lunsford*, 359 N.C. 382, 390-91, 610 S.E.2d 366, 372 (2005) (discussing parental abandonment in the context of Intestate Succession Act). Similarly, we now hold that the district court's findings support an adjudication of willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7), notwithstanding respondent's visitation with the child on 30 June 2004.

Having found a valid basis for termination of respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(7), we need not address the additional ground of neglect found by the district court. See *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990); *In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982).

Order affirmed; motion to dismiss denied.

Judges WYNN and McGEE concur.

Report per Rule 30(e).