NO. COA06-458

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

IN THE MATTER OF: B.C.T.

New Hanover County
No. 04 J 327

Appeal by respondent-father from order entered 7 November 2005 by Judge Phyllis M. Gorham in New Hanover County District Court. Heard in the Court of Appeals 18 October 2006.

New Hanover County Department of Social Services, by Dean Hollandsworth, for petitioner-appellee.

Sofie Hosford, for respondent-appellant father.

Parker, Poe, Adams & Bernstein L.L.P., by Benjamin Sullivan, for Guardian ad Litem.

LEVINSON, Judge.

Respondent-father appeals from an order terminating his parental rights in the minor child, B.C.T. We affirm.

The pertinent facts may be summarized as follows: B.C.T. was born on 22 July 1995. On 22 August 1999, B.C.T. was taken into custody by the New Hanover County Department of Social Services (DSS) because his mother was arrested for using drugs in B.C.T.'s presence.

Father first appeared for a permanency planning review hearing concerning B.C.T. on 6 April 2000. Originally, DSS pursued efforts to reunify B.C.T. with father, as he agreed to participate in

certain court-ordered programs such as an anger management and parenting courses. Father began unsupervised visitations with B.C.T. in November 2002. In January 2003, during an unsupervised visit with B.C.T., father spanked B.C.T. because, as father explained, the child was "back talking me, and I popped him on his tail." Mary Beth Rubright, the DSS worker assigned to B.C.T.'s case, opined that father had spanked B.C.T. because he "lost his temper."

B.C.T. is a "special needs child" who has been diagnosed with the following conditions: attention deficit hyperactivity disorder, oppositional defiant disorder, encopresis, and enuresis. B.C.T. has also been classified as "emotionally disabled." Accordingly, B.C.T. receives psychiatric counseling and medication. During a January 2003 conversation with B.C.T.'s social worker, father concluded that he "could not deal with [B.C.T.'s] behavior at this time." Soon thereafter, Rubright suspended father's visitations and explained that future visits with B.C.T. would need to occur in family therapy and that it was father's responsibility to initiate such family sessions. After consultation with father's therapist, DSS concluded that he needed individual counseling before he would be "stable" enough for family therapy with B.C.T. After being told in January 2003 that he would need to pursue therapy to have further visits with B.C.T., father discontinued therapy and, on 2 March 2003, was incarcerated for a domestic violence charge stemming from December of 2002. He was released on 28 June 2003, but incarcerated again on 12 July 2003 on charges of violating a

domestic violence protective order, breaking and entering, and damage to property. Father was released from a prison sentence on 27 November 2003. He had no additional contact with DSS until January 2004, at which time B.C.T.'s social worker reminded father that he could not resume visits with B.C.T. until he obtained counseling. Although father resumed counseling after the petition to terminate his parental rights was filed, his last pre-petition counseling session occurred in January 2003.

DSS filed a petition to terminate father's parental rights on 20 July 2005. Father testified that he had been married for six months and had worked at a towing company for the same duration of time. Father further testified that he had attended two psychological counseling sessions after being served with the petition to terminate his parental rights. He also stated that he last visited with B.C.T. in January of 2003, two years and nine months before the hearing. Additionally, father confirmed that he had been incarcerated twice, and that he had "popped [B.C.T.] on his tail" during an unsupervised visit. He attempted to contact B.C.T. after he was released from prison in November of 2003, but was told by DSS that he could not have contact with the minor. When asked, "[s]o, you're not stabilized in your counseling which was recommenced back in 2001," father answered, "Yeah." Father stated he discontinued therapy because "he didn't have the money to go."

DSS worker Mary Rubright testified that, between March 2004 and July 2005, father did not attempt to contact DSS to inquire

about B.C.T.'s welfare or to explore pursuing reunification with the child. Rubright explained that while DSS attempted to contact father after he ended contact in March 2004, DSS was unable to reach him using the contact information he had provided. Rubright further testified that after visitations were suspended in January 2003, father did not send any cards, gifts, letters, or other correspondence to B.C.T. after November 2003. While father attended anger management and parenting classes, Rubright noted that "when it came time to . . . put what he had learned to the test through unsupervised visits, it fell apart."

In its order of 7 November 2005, the trial court found two grounds for terminating father's parental rights: (1) willfully abandoning B.C.T. for at least six months before the petition was filed, and (2) willfully leaving B.C.T. in foster care for at least 12 months without making reasonable progress in correcting the conditions that caused his removal. The trial court concluded that terminating father's parental rights would be in B.C.T.'s best interests. From this order, father now appeals.

On appeal, father first contends that the trial court erred in concluding that he willfully abandoned B.C.T. pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2005). We disagree.

A court's termination of parental rights is a two-step process: there is an adjudicatory stage to the proceeding under N.C. Gen. Stat. 7B-1109 (2005), and a dispositional stage under N.C. Gen. Stat. 7B-1110 (2005). *In re Howell*, 161 N.C. App. 650, 656, 589 S.E.2d 157, 160-61 (2003). During the adjudication stage,

the trial court determines whether clear, cogent, and convincing evidence exists to support at least one of the grounds for termination under G.S. § 7B-1111. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 5 (2004) (citations omitted). Where such evidence is present, the court moves to the dispositional stage, and it considers whether terminating parental rights would be in the best interest of the child. *Howell*, 161 N.C. App. at 656, 589 S.E.2d at 161 (citation omitted). This Court has described the standard of review for termination of parental rights cases as:

> 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.

Shepard at 221-22, 591 S.E.2d at 6 (internal quotation marks omitted).

The trial court may terminate a respondent's parental rights upon a finding that he or she "has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion [.]" G.S. § 7B-1111(a)(7). Under this statute, the trial court must evaluate a respondent's behavior in the six months before the petition for termination of parental rights was filed. *See In re Young*, 346 N.C. 244, 251, 485 S.E.2d 612, 617 (1997) ("since the petition for terminating respondent's parental rights was filed on 6 May 1994, respondent's behavior between 6 November 1993 and 6 May 1994 is determinative"). In the

instant case the petition was filed 18 July 2005, making father's actions between 18 January 2005 and 18 July 2005 dispositive.

"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). "Abandonment has been defined as 'wilful neglect and refusal to perform the natural and legal obligations of parental care and support . . . . [I]f a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wilfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.'" *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003)(quoting *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962)). This Court has held that the existence of practical barriers to a respondent's involvement with his child will not excuse the respondent's failure to do what he could under the circumstances. *See In re Graham*, 63 N.C. App. 146, 151, 303 S.E.2d 624, 627 (1983) ("The fact that the respondent was incarcerated . . . does not provide any justification for his all but total failure to communicate with or even inquire about his children.").

In the instant case, the trial court made findings of fact including, in pertinent part, the following:

> 13. The Respondent-Father stated that the reason he did not attempt to visit with his child since January of 2003, a period of approximately two years and nine months, was that his former girlfriend, Susan Carroll said that he could not. He did not inquire of the

> social worker as to his ability to obtain visitation and his last contact with her prior to the telephone calls in 2005 was in March of 2004. The Court finds this explanation to be inadequate to account for the lack of visitation in this matter.
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> 16. The Respondent-Father willfully abandoned the child for a period in excess of six consecutive months immediately preceding the filing of the Petition in this matter. His last visit with the child came in January of 2003, a period of approximately two years and nine months to the date of this hearing. He has not adequately explained the reason for his failure to seek visitation during that time period or why he last called about this case in March of 2004 until prompted by service of process in this matter to inquire of the social worker as to how to resume reunification efforts in July of 2005, subsequent to the filing of the Petition to Terminate Parental Rights. He had not sent cards, letters, presents or other correspondence to the child during the six months prior to the filing of the Petition, nor did he inquire of the social worker as to his son's welfare during that time period.

Here, father has not challenged the trial court's specific findings of fact. The findings are therefore presumed to be supported by competent evidence, and they are binding on appeal. *In re Padgett*, 156 N.C. App. 644, 648, 577 S.E.2d 337, 340 (2003). We are therefore left to determine whether the trial court's factual findings support its conclusions of law. We conclude the trial court's conclusion that father abandoned B.C.T. is supported by its findings of fact as set forth above. Accordingly, we hold that the trial court did not err by concluding that father willfully abandoned B.C.T. for a period in excess of six consecutive months immediately preceding the filing of the

petition. In addition, as only one ground is needed to support termination of parental rights, it is not necessary for us to consider the other ground upon which the trial court terminated father's parental rights. *In re Stewart Children*, 82 N.C. App. 651, 655, 347 S.E.2d 495, 498 (1986). This assignment of error is overruled.

Father next contends that the trial court abused its discretion by concluding that it was in B.C.T.'s best interests to terminate his parental rights. We disagree.

N.C. Gen. Stat. § 7B-1110(a) (2003) provides, in relevant part, that:

> Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

We review the trial court's conclusion that a termination of parental rights would be in the best interest of the child on an abuse of discretion standard. *In Re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791, *disc. review denied*, 359 N.C. 633, 614 S.E.2d 924 (2005). "Abuse of discretion exists when 'the challenged actions are manifestly unsupported by reason.'" *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (quoting *Blankenship v. Town and Country Ford, Inc.*, 155 N.C. App. 161, 165, 574 S.E.2d 132, 134 (2002)).

Here, the findings illustrate significant parenting deficiencies on the part of father, who had last visited with B.C.T. two years and nine months before the hearing to terminate parental rights. We conclude the trial court did not abuse its discretion by concluding that terminating father's parental rights was in the best interests of B.C.T. This assignment of error is overruled.

Affirmed.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).