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NO. COA08-1011

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2009

In THE MATTER OF:

J.L.W.,  
A Minor Child.

Harnett County  
No. 06 J 59

Appeal by Respondent from order entered 9 June 2008 by Judge Albert A. Corbett, Jr. in District Court, Harnett County. Heard in the Court of Appeals 23 December 2008.

# Court of Appeals

*E. Marshall Woodall and Duncan B. McCormick, for Petitioner-Appellee Harnett County Department of Social Services.*

*Winifred H. Dillon for Respondent-Appellant Father.*

*Pamela Newell Williams for Respondent-Appellee Guardian ad Litem.*

# Slip Opinion

McGEE, Judge.

N.M. (Respondent) is the biological father of the minor child J.L.W., who was born in the fall of 2004 to P.W. At the time of J.L.W.'s birth, P.W. was married to G.W., the legal father of J.L.W. Neither P.W. nor G.W. are parties to this appeal.

The Harnett County Department of Social Services (Petitioner) filed a juvenile petition on 7 March 2006 alleging that J.L.W. was neglected. The trial court entered an order on 22 December 2006, adjudicating J.L.W. to be neglected in that P.W. did not provide proper care or supervision to J.L.W. Due to P.W.'s inability to

meet the terms of her family services agreement with Petitioner, the trial court entered an order on 20 April 2006 ceasing reunification efforts as to P.W. and G.W., and setting a permanent adoption plan for J.L.W. The trial court further ordered that a DNA test be conducted to determine if Respondent was the biological father of J.L.W., and ordered that Petitioner's efforts as to Respondent be reconsidered after completion of the DNA test. Subsequent DNA testing confirmed that Respondent is the biological father of J.L.W.

Petitioner filed a motion seeking the termination of the parental rights of P.W., G.W., and Respondent on 9 March 2007. P.W. voluntarily relinquished her parental rights to J.L.W. on 13 July 2007, and after a hearing held the same day, the trial court terminated G.W.'s parental rights. By consent of all parties, the trial court held a combined permanency planning and termination of parental rights hearing on 14 March 2008. At the close of the hearing, the trial court found that reasonable efforts towards reunification of Respondent with J.L.W. should cease, that grounds existed for the termination of Respondent's parental rights to J.L.W., and that it was in the best interest of J.L.W. to terminate Respondent's parental rights. The trial court entered its order ceasing reunification efforts that same day and subsequently entered an order terminating Respondent's parental rights on 9 June 2008. Respondent appeals.

In Respondent's assignment of error number three, he argues the trial court erred in making finding of fact number thirteen in

its order terminating Respondent's parental rights to J.L.W. Finding of fact thirteen states: "During 2003 or early 2004, [R]espondent [] became involved with [P.W.] He sold or offered cocaine to [P.W.] to use prior to the birth of [J.L.W.] or while [Respondent] was involved with [P.W.]" Respondent contends the only evidence before the trial court to support this finding was the testimony of P.W. herself, and that her testimony was not credible.

"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." *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (quoting *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984)), *disc. review denied*, *In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004). If the trial court's findings of fact "are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re Williamson*, 91 N.C. App. 668, 674, 373 S.E.2d 317, 320 (1988). However, "it is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000). At the hearing, P.W. testified that she engaged in sexual relations with Respondent and purchased crack cocaine from him numerous times. While P.W. did not establish the clearest of time frames in which she purchased crack cocaine from

Respondent, we cannot say the trial court erred in making its finding of fact number thirteen. This assignment of error is overruled.

Respondent also argues the trial court erred in its finding of fact fifteen and its conclusion of law number five, which state:

15. [Respondent] has foregone his parental duties and responsibilities; he has taken no act to parent [J.L.W.]

. . .

5. The [R]espondent has willfully abandoned [J.L.W.] for at least six (6) consecutive months immediately preceding the filing of the petition seeking termination. Grounds exist to terminate [Respondent's] parental rights pursuant to Section 7B-1111(a)(7).

We disagree.

A court may terminate parental rights upon a finding that "[t]he 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) (2007). "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. The word 'willful' encompasses more than an intention to do a thing; there must also be purpose and deliberation." *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986) (citations omitted). "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. Further, this Court has found willful abandonment to exist "where 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 D.J.D.*, 171 N.C. App. 230, 241, 615 S.E.2d 26, 33 (2005) (quotations and citations omitted).

After review of the record before this Court, we find the trial court's finding of fact number fifteen to be supported by clear, cogent and convincing evidence. The evidence before the trial court indicated P.W. informed Respondent that Respondent was the biological father of J.L.W. well before Petitioner became involved in this case. Yet, Respondent took no steps to establish his paternity. Respondent took no interest in parenting J.L.W. and did not provide any support, love, or care to J.L.W. Additionally, the following findings of fact are unchallenged by Respondent and thus binding on appeal:

14. [Respondent] has paid no funds to defray the cost of [J.L.W.'s] care. [Respondent] made no gifts, provided no clothes or sent any cards for [J.L.W.]

. . .

16. [Respondent] has taken no action to legitimate [J.L.W.] even though he was informed by [P.W.] that [J.L.W.] was his child prior to court intervention. [Respondent] provided no child support to [P.W.] for the benefit of [J.L.W.] . . .

17. After court intervention and involvement with DSS, [Respondent] did not participate in services offered to him (parenting classes, substance abuse and anger management classes) because he believed he did not need any services.

. . .

21. [J.L.W.] is over three (3) years old; he

has been in foster care for the past twenty (20) months.

. . .

23. There is no relationship between [J.L.W.] and [Respondent]. [Respondent] has never participated in the parenting of [J.L.W.]

We hold these findings of fact support the trial court's conclusion of law number five that grounds existed to terminate Respondent's parental rights to J.L.W. in that Respondent willfully abandoned J.L.W. for at least six consecutive months immediately preceding the filing of the motion to terminate Respondent's parental rights. Assignments of error numbers four and eight are overruled. In light of our holding with respect to these grounds of termination, we need not address Respondent's remaining assignments of error. See N.C. Gen. Stat. § 7B-1111(a) (2007) ("The court may terminate the parental rights upon a finding of one or more of the following . . . ."); *In re D.B.*, 186 N.C. App. 556, 561, 652 S.E.2d 56, 60 (2007) ("Where a trial court concludes that parental rights should be terminated pursuant to several of the statutory grounds, the order of termination will be affirmed if the court's conclusion with respect to any one of the statutory grounds is supported by valid findings of fact."), *aff'd per curiam*, 362 N.C. 345, 661 S.E.2d 734 (2008).

Affirmed.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).