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NO. COA13-644

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

IN THE MATTER OF:

S.R.

Lincoln County
No. 11 JA 47

Appeal by respondent-father from order entered 23 April 2013 by Judge Larry J. Wilson in Lincoln County District Court. Heard in the Court of Appeals 15 October 2013.

Peter C. McCrea, for petitioner-appellee Lincoln County Department of Social Services.

Kerner Law Firm, by Robert C. Kerner, Jr., for Guardian ad Litem.

Peter Wood, for respondent-appellant father.

CALABRIA, Judge.

Father ("respondent") appeals from an order terminating his parental rights to his son, S.R. ("Scott").¹ Scott's mother

¹ We use this pseudonym to protect the juvenile's privacy and for

relinquished her parental rights and is not a party in this appeal. We affirm.

S.J. is the mother of Scott, born January 2005, and two other children.² Respondent is Scott's father. The Lincoln County Department of Social Services ("DSS") became involved with S.J. and her children in 2009 due to reports that the children were left alone with inadequate supervision and "people [were seen] carrying drugs into the home." DSS placed Scott and his half-siblings with their maternal grandparents in August 2009. On 6 June 2011, DSS filed a juvenile petition alleging Scott was a neglected juvenile based upon S.J.'s issues involving drug abuse, domestic violence, and mental health. The juvenile petition stated respondent's whereabouts were unknown. Respondent was served with a summons and petition at a child support hearing.

Respondent did not attend an adjudicatory hearing on 6 February 2012, despite being properly served with a summons and a copy of the petition. However, respondent's appointed counsel was present. On 21 February 2012, the court adjudicated Scott

ease of reading.

²Only Scott is the subject of this appeal.

as a dependent child,³ concluded he should remain in the custody of DSS, and approved his current foster care placement.

On 18 September 2012, DSS filed a petition to terminate S.J.'s and respondent's parental rights. DSS alleged grounds existed to terminate respondent's parental rights based upon neglect, abandonment, failure to make reasonable progress, and failure to pay a reasonable portion of the cost of care, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (7) (2011). DSS voluntarily dismissed the termination petition with respect to S.J. Subsequently, S.J. relinquished her parental rights to Scott.

The trial court heard respondent's termination petition on 25 February 2013. In an order dated 23 April 2013, the trial court concluded all four grounds existed to terminate respondent's parental rights. The trial court further concluded that it was in Scott's best interests to terminate respondent's parental rights. Respondent appeals.

I. Standard of Review

"The standard for review in termination of parental rights cases is whether the findings of fact are supported by clear,

³ We note dependency is not the ground alleged in the juvenile petition; however, since parental rights were subsequently terminated, this issue has no bearing on the appeal.

cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). “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, 222, 591 S.E.2d 1, 6 (2004) (citation and quotation marks omitted), *disc. review denied sub nom. In re D.S.*, 358 N.C. 543, 599 S.E.2d 42 (2004).

II. Ground for Termination

Respondent argues the trial court erred in determining grounds existed to terminate his parental rights. Although the trial court concluded grounds existed to terminate respondent’s parental rights pursuant to sections 7B-1111(a)(1), (2), (3), and (7) of the North Carolina General Statutes, we find it dispositive that the evidence is sufficient to support termination of respondent’s rights under section 7B-1111(a)(7). See *In re K.J.L.*, 206 N.C. App. 530, 534, 698 S.E.2d 150, 153 (2010) (“A finding of any one of the separately enumerated grounds is sufficient to support a termination [of parental rights].”).

A juvenile court may terminate parental rights if the

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) (2011). This Court has held that under this section, abandonment is established by the parent's "wilful neglect and refusal to perform the natural and legal obligations of parental care and support." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003) (citation omitted). Abandonment may occur when the "parent withholds his presence, his love, his care, the opportunity to display filial affection, and wilfully neglects to lend support and maintenance[.]" *Id.* To terminate parental rights on the basis of abandonment, the court's findings must "show more than a failure of the parent to live up to [his] obligations as a parent in an appropriate fashion; the findings must clearly show that the parent's actions are wholly inconsistent with a desire to maintain custody of the child." *In re S.R.G.*, 195 N.C. App. 79, 87, 671 S.E.2d 47, 53 (2009).

The petition to terminate respondent's parental rights was filed on 18 September 2012. Thus, the relevant six-month period for assessing the ground of abandonment is from 18 March 2012 to 18 September 2012. The trial court made several unchallenged findings of fact in support of its conclusion that grounds

existed to terminate respondent's parental rights based on abandonment. Specifically, the court found that at no time during DSS's involvement had respondent requested custody or visitation with Scott, even though respondent was never denied visitation. Respondent made no contact during the two and a half years Scott lived with his maternal grandparents, did not inquire about Scott, and the only support respondent sent for Scott was a care package purchased with money provided by respondent's sister. The court also found that respondent only met the DSS social worker assigned to the case, Amy Ramsey ("Ramsey"), on one occasion and that respondent failed to follow Ramsey's advice regarding obtaining custody of Scott. The court further found that while respondent had the ability to work and earn a reasonable income in the six months preceding the hearing, respondent indicated there was no time in the three years preceding the hearing when he would have been able to parent Scott. Because respondent did not challenge any of these findings, they are binding on appeal. *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

Respondent contends that these findings do not support the trial court's determination that he abandoned Scott, arguing that he was "unaware of any court dates" and he was incarcerated

"immediately after the July, 2012 meeting." Incarceration alone "neither precludes nor requires a finding" of willful abandonment. *In re Harris*, 87 N.C. App. 179, 184, 360 S.E.2d 485, 488 (1987), *superseded by statute on other grounds as stated in In re D.J.D.*, 171 N.C. App. 230, 615 S.E.2d 26 (2005). However, one communication over a two-year period is insufficient evidence to prove the personal contact, love, and affection that is inherent in a parent-child relationship, and incarceration is not an excuse for failing to communicate or inquire about the child's well-being. *In re Graham*, 63 N.C. App. 146, 151, 303 S.E.2d 624, 627 (1983) (internal citation omitted). Moreover, respondent cannot rely on his incarceration or his lack of awareness of court dates to excuse his responsibilities as a parent. The facts in the instant case show that for well over six months preceding the filing of the termination petition, respondent did not provide Scott with any parental support and had no contact with him.

Respondent's actions were also wholly inconsistent with the desire to maintain custody of his child. *In re S.R.G.*, 195 N.C. App. at 87, 671 S.E.2d at 53. Respondent knew of Scott and knew that Scott was his child. Respondent knew where Scott was located and had the means to communicate with Scott despite

respondent's incarceration for two of the six months preceding the filing of the petition. However, respondent made no effort to communicate with Scott, nor did he contact DSS to inquire about Scott's well-being. The trial court's unchallenged findings show that since 2009, the only gesture respondent made was to send one "care package" purchased by someone else. Otherwise, respondent had done nothing to prove his desire to care for or support Scott. "[R]espondent's lack of involvement with his child[] for a period of more than two years establishes the pattern of abandonment[.]" *In re Graham*, 63 N.C. App. at 151, 303 S.E.2d at 627. The trial court's findings show more than a failure on respondent's part to live up to his parental obligations. *In re S.R.G.*, 195 N.C. App. at 87, 671 S.E.2d at 53. The facts in the instant case clearly show respondent's actions are wholly inconsistent with a desire to maintain custody of Scott. *Id.* Additionally, the trial court's findings support its conclusion that respondent willfully abandoned Scott for at least six months prior to the filing of the petition for termination of parental rights. Accordingly, the trial court properly concluded grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(7).

Because the trial court found multiple grounds to terminate respondent's parental rights, and this Court has determined at least one ground exists to support the trial court's conclusion that respondent's parental rights should be terminated, it is unnecessary to address the remaining grounds. *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005).

III. Best Interests of the Child

Respondent further contends the trial court abused its discretion in concluding during the dispositional stage that the termination of his parental rights was in Scott's best interests. We disagree.

Even where grounds for termination exist, termination should only occur if it is in the best interests of the child. *In re Montgomery*, 311 N.C. 101, 107-08, 316 S.E.2d 246, 251 (1984). In determining whether terminating the parent's rights is in the child's best interests, the court shall consider several factors, including the child's age and the likelihood of adoption; the parent-child bond; whether the termination of parental rights will aid in the child's DSS permanent plan; the quality of the relationship between the child and the proposed adoptive parent; and any other relevant consideration. N.C. Gen. Stat. § 7B-1110 (2011). A trial court's decision to

terminate parental rights is reversible only if the court abused its discretion in doing so. *In re D.W.C., J.A.C.*, 205 N.C. App. 266, 271, 698 S.E.2d 79, 83 (2010).

In the instant case, the trial court made several unchallenged findings of fact regarding Scott's age and his current placement. As above, respondent did not challenge any of these findings of fact and they are therefore binding on appeal. *See In re Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 426.

The trial court found that Scott was doing very well and enjoyed excellent family relationships in his current placement in a prospective adoptive home, that the likelihood of his adoption was high, and that the termination of respondent's parental rights would aid in the accomplishment of Scott's adoption. The court specifically found that due to respondent's lack of contact with his son, Scott had not asked about his father for a significant period of time and there was virtually no parent-child bond between the two. These findings address each of the relevant factors contained in N.C. Gen. Stat. § 7B-1110(a) and support the trial court's conclusion that terminating respondent's parental rights was in Scott's best interests.

Respondent argues that the trial court abused its discretion by not considering his request that Scott be placed with respondent's sister. This Court has stated that "[a] trial court may, but is not required to, consider the availability of a relative placement during the dispositional phase of a hearing to terminate parental rights." *In re M.M.*, 200 N.C. App. 248, 258, 684 S.E.2d 463, 469 (2009), *disc. review denied*, 364 N.C. 241, 698 S.E.2d 401 (2010). Further, "the trial court is not required to make findings of fact on all the evidence presented, nor state every option it considered." *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005).

In the instant case, DSS considered respondent's sister as a relative placement. However, according to the guardian ad litem's report, respondent's sister was not interested in custody as of October 2012. She merely wished to be a part of Scott's support system. In addition, Ramsey testified at the hearing that DSS did not consider respondent's sister an appropriate placement because living with the sister would require Scott to move from the home where Scott lived with his half-sister. Ramsey also indicated the prospective adoptive family lived near Scott's maternal grandparents, with whom he had lived for over two years and who were part of Scott's

support system. Although the trial court did not make a specific finding regarding placement with respondent's sister, the trial court heard and considered testimony regarding the placement. We conclude the trial court did not abuse its discretion at the dispositional phase of the hearing by deciding that termination of respondent's parental rights was in Scott's best interests. Accordingly, the order of the trial court is affirmed.

Affirmed.

Judges HUNTER, Robert C. and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).