NO. COA13-682
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

IN THE MATTER OF:

S.J.S. Burke County
No. 12 JT 181

Appeal by respondent from order entered 26 March 2013 by Judge Mark Killian in Burke County District Court. Heard in the Court of Appeals 15 October 2013.

Wayne O. Clontz for petitioner-appellee mother.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for respondent-appellant father.

HUNTER, JR., ROBERT N., Judge.

The father ("Respondent") of the minor child S.J.S. ("Susie")[1], appeals from the order terminating his parental rights. We affirm.

I. Background

[1]We use this pseudonym to protect the juvenile's privacy and for ease of reading.

S.J.S's mother ("Petitioner") and Respondent were married in March 2005, and Susie was born five months later. Following the parents' separation in June 2009, the district court awarded primary custody of Susie to Petitioner. On 4 February 2010, the court ordered Respondent to pay child support of $233.00 per month. In an order entered 1 July 2010, the court awarded Respondent visitation with Susie on a graduated schedule, to begin with four two-and-one-half-hour supervised visits on alternating Sundays and building toward 48-hour visits every other weekend beginning in January of 2011. Respondent was also granted visitation on Susie's birthday, Thanksgiving, and Christmas. The parents were to meet to exchange the child at the sheriff's department.

Petitioner filed for termination of Respondent's parental rights on 19 November 2012, and Respondent filed his answer on 14 December 2012. Following an adjudicatory hearing on 7 February 2013 and a dispositional hearing on 7 March 2013, the district court entered an order terminating Respondent's parental rights on 26 March 2013. The court based its conclusion on the following findings of fact:

> 13. The Respondent was ordered to pay child support . . . at the rate of $233.00 per month . . . . As of February 7, 2013, he is $5,095.87 in arrears in his child support

obligation.

. . . .

16. The July 1, 2010 custody order set forth a graduated visitation schedule for the Respondent father.

17. The Respondent father last visited with the minor child in August of 2010.

18. In October of 2012, the Respondent father showed up at the residence of the Petitioner with his mother and stepfather in an attempt to visit the child.

19. The Respondent father has not provided Christmas gifts [to] or corresponde[d] with the child in 2010, 2011, or 2012.

20. [Susie] attends W.A. Young Elementary School and is otherwise healthy and happy. She is now 7 and a half years of age.

21. The Respondent father has not been involved in any of the child's school activities despite testifying that his own brother (age 9) rides the same school bus with [Susie]. In October of 2012 the Respondent knew his child attended W.A. Young Elementary School but he did not visit her at the school.

22. The Respondent father was gainfully employed through Friday Staffing and Continental Teves, but he was laid off and now receives unemployment benefits . . . . He has previously held several minimum wage jobs including work at Spindale Tire, Flower's Bakery and Bridges Construction.

23. The Respondent father tried to contact the Petitioner mother through Facebook 3 or 4 times.

> 24. Prior to the February 7, 2013 hearing the Respondent father paid $14.00 in child support and $30.00 a few weeks before trial. The Respondent has been found in civil contempt and incarcerated on two or three occasions for non-payment of child support for [Susie].
>
> 25. Prior to the filing of the Petition the Respondent knew the Petitioner's residential address. The Respondent also knew that the Petitioner worked for the Respondent's mother.
>
> 26. Between August 2010 and February 2011 the Petitioner went to the Burke County Sheriff's Department to meet the Respondent for his visitation with [Susie,] but he failed to appear during those times.

As a supplement to its adjudicatory findings, the court also found the following additional facts at disposition:

> 1. The Petitioner and [Susie] live with the Petitioner's boyfriend, Andrew Hicks. The minor child enjoys a close relationship with Mr. Hicks, . . . whom she refers to as her daddy. [Susie] and Andrew Hicks have a "father-daughter" type of bond. [He] attends school functions with [Susie].
>
> 2. The Guardian ad litem believes it is in the best interests of [Susie] that the Respondent's parental rights be terminated.
>
> 3. That Mr. Hicks . . . and the Petitioner are planning on getting married. Mr. Hicks is a potential adoptive parent and has indicated an interest in filing a Petition for Adoption to adopt [Susie] as his child.

Based upon the above findings of fact, the trial court concluded that Susie's best interests required the termination of Respondent's parental rights. Respondent filed timely notice of appeal from the order.

II. Standard of Review

We review an order terminating parental rights to determine whether the district court's findings of fact are supported by clear, cogent and convincing evidence and whether the conclusions of law are supported by the findings of fact. *In re Shepard*, 162 N.C. App. 215, 221, 591 S.E.2d 1, 6 (2004). Findings are deemed to be adequately supported by the evidence "where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary." *In re Montgomery*, 311 N.C. 101, 110–11, 316 S.E.2d 246, 252–53 (1984). A finding that is not challenged by the appellant is binding on appeal. *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). Conclusions of law are reviewed *de novo*. *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

III. Adjudication under N.C. Gen. Stat. § 7B-1111

Respondent-father argues that the district court erred in adjudicating the existence of grounds to terminate his parental

rights under N.C. Gen. Stat. § 7B-1111(a) (2011). The court adjudicated the existence of grounds for termination based on (1) neglect; (2) willful failure to pay a reasonable portion of the cost of Susie's care, support, and education; and (3) willful abandonment. N.C. Gen. Stat. § 7B-1111(a)(1), (4), (7).

A. Findings of Fact

Respondent challenges aspects of findings 18, 19, 23, and 25, which he characterizes as "terribly flawed." He also excepts to certain "inferences" created by the findings related to his child support payment history, though he concedes that "these findings can withstand evidentiary scrutiny . . . if they are read literally[.]"

Regarding finding 18, Respondent asserts that he went to Petitioner's residence in October of 2012 with his father and stepmother, rather than his mother and stepfather. While acknowledging that Petitioner's testimony supports the court's finding, he insists the "overwhelming evidence" showed that he was estranged from his mother. Respondent views this detail as significant insofar as it undermines the court's implication in finding 25 that he knew Petitioner's address because she worked for his mother.

We find no merit to Respondent's argument. Petitioner testified that Respondent "show[ed] up with his mother and stepfather and [police officers]" at her residence in October of 2012. She opined that Respondent had done so "because his mother asked him to do it." In his own testimony about the incident, Respondent did not indicate which of his parents had accompanied him.[2] However, when the court announced its proposed findings about the incident in open court, Respondent's counsel confirmed the court's recollection that "it was his mother . . . and stepfather" who were with Respondent.

More importantly, the contested detail is immaterial. Whether Respondent chose not to speak to his mother, he was aware that Petitioner was working for her. He had ample means to determine Susie's whereabouts at all times relevant to these proceedings had he chosen to do so. Although Petitioner and Susie did move in August of 2010, their new address was approximately two blocks away from the previous residence on the same street. Petitioner continued to bring Susie to the sheriff's department through February 2011 to honor Respondent's visitation rights. When Petitioner moved again in August of

[2] Respondent also testified his mother facilitated at least one of his visits with Susie in the summer of 2010. While he later averred, "I don't speak to my mother[,]" he admitted knowing that Petitioner worked for her.

2011, she and Susie lived "about a half a mile from [Respondent's] father." Respondent also knew that Susie rode the school bus with his brother. Inasmuch as Respondent came to Petitioner's house the month before she filed the petition to terminate his parental rights, the court's finding 25 is fully supported by the record.

Respondent next objects to finding 19 that he "has not provided" gifts or correspondence to Susie during 2010 through 2012. While he "acknowledges that clear, cogent, and convincing evidence supports a finding that Susie did not 'receive' any gifts or correspondence from him," he suggests that "the finding that [he] 'did not provide' any gifts or cards is not properly supported." We disagree. Petitioner testified in detail regarding the lack of any gifts, cards or correspondence of any kind from Respondent to Susie. Respondent initially testified that his father "brought [gifts] to [Susie]" on Respondent's behalf but "they turned my dad away." He then allowed that he did not actually know "what [his] dad did or what happened[.]" The court was free to credit Petitioner's testimony over Respondent's in its capacity as fact-finder. We note Respondent's claim is inconsistent with his position that he did not know Susie's whereabouts until October 2012.

Respondent excepts to finding 23 insofar as it states that he attempted to contact Petitioner on Facebook three or four times, rather than four or five times. Again, we find this detail immaterial to the merits of the termination order. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (stating that "erroneous findings unnecessary to the determination do not constitute reversible error" where an adjudication is supported by additional valid findings).

As for the issue of child support, Respondent concedes the evidence supports the court's findings regarding the amount of his court-ordered obligation, his arrearage, his prior incarcerations for non-payment of support, and his recent payments leading up to the hearing. However, he claims the court's findings are incomplete and misleading. Based on his $233.00 monthly support obligation dating from 4 February 2010 and his $5,095.87 total arrearage as of 7 February 2013, Respondent purports to extrapolate additional facts about his child support payments – including his outlay of "more than $1,857.00 between 4 February 2010 and 1 April 2013." Therefore, while admitting that Petitioner's testimony supports finding 24, Respondent insists the finding "hardly presents a fair and accurate picture of the financial support [he] provided."

The district court's findings are supported by the hearing evidence and the court files. Respondent was free to provide additional information about his child support payments but did not do so. In addition to recounting his employment history, Respondent testified that he was laid off in June of 2012, and that $18.00 per week is deducted from his unemployment check for child support. He confirmed his $233.00 monthly obligation and that he had been jailed "[t]wo or three times" for nonpayment, but did not know his total arrearage. Respondent admitted he did not provide support voluntarily before the court entered its order.

B. Conclusions of Law

In adjudicating grounds for termination based on neglect under N.C. Gen. Stat. § 7B-1111(a)(1), the court concluded that Respondent "has neglected the minor child by failing to provide the personal contact, love and affection that inheres in the parental relationship and by failing to provide substantial financial support . . . [,] and it is likely that the current neglect will continue for the foreseeable future[.]" Respondent disputes this conclusion, arguing that neither Petitioner's evidence nor the court's findings show that he was neglecting Susie at the time of the adjudication hearing, or that he

"probably would neglect Susie if she were placed in his care." We disagree.

Under N.C. Gen. Stat. § 7B-1111(a)(1), "[t]he trial court may terminate the parental rights to a child upon a finding that the parent has neglected the child." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003). Our Juvenile Code defines a neglected juvenile, *inter alia*, as one "who does not receive proper care, supervision, or discipline from the juvenile's parent, . . . or who has been abandoned[.]" N.C. Gen. Stat. § 7B-101(15) (2011). "A finding of neglect sufficient to terminate parental rights must be based on evidence showing neglect at the time of the termination proceeding." *In re Young*, 346 N.C. 244, 248, 485 S.E.2d 612, 615 (1997). "In determining whether neglect has occurred, 'the trial judge may consider . . . a parent's complete failure to provide the personal contact, love, and affection that [exists] in the parental relationship.'" *In re A.J.M.P.*, 205 N.C. App. 144, 149, 695 S.E.2d 156, 159 (2010) (quoting *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982)).

We conclude the district court's findings are sufficient to establish grounds for termination based on neglect. The facts show that Respondent has had no contact with Susie since

abandoning his scheduled visitations in August of 2010. Respondent made no meaningful effort to stay in contact with Petitioner or maintain any sort of relationship with his young daughter, despite the fact that she was readily accessible through easily ascertainable means. Although Respondent has paid some small amount of child support, the evidence shows these payments were made only by threat of incarceration or through automatic deduction from his unemployment benefits. Accordingly, we affirm the court's adjudication under N.C. Gen. Stat. § 7B-1111(a)(1). *See In re L.O.K.*, 174 N.C. App. 426, 436, 621 S.E.2d 236, 242–43 (2005); *In re Bradshaw*, 160 N.C. App. 677, 681–83, 587 S.E.2d 83, 86–87 (2003); *In re Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 427.

Having upheld the district court's first ground for termination, we need not review the remaining grounds under N.C. Gen. Stat. § 7B-1111(a)(4) and (7). *In re B.S.D.S.*, 163 N.C. App. 540, 546, 594 S.E.2d 89, 93–94 (2004).

IV. Disposition under N.C. Gen. Stat. § 7B-1110

Respondent also claims the district court abused its discretion by electing to terminate his parental rights. "After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether

terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a). In assessing the child's best interests, the court must make written findings as to the following factors, if relevant:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id. The court has broad discretion in weighing these factors. *In re C.L.C.*, 171 N.C. App. 438, 448, 615 S.E.2d 704, 709–10 (2005), *aff'd per curiam*, 360 N.C. 475, 628 S.E.2d 760 (2006). "The decision to terminate parental rights . . . will not be overturned on appeal absent a showing that the judge[']s] actions were manifestly unsupported by reason." *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005).

As a supplement to its adjudicatory findings, the court found that Susie had a close relationship with Petitioner's

boyfriend, Mr. Hicks, that they had a "father-daughter" type of bond, that the Guardian *ad litem* thought Susie would be best served by remaining with Petitioner and Mr. Hicks, that Petitioner and Mr. Hicks were planning to be married, and that Mr. Hicks planned to adopt Susie. As a result, the court determined that Susie's best interests required the termination of Respondent's parental rights.

In challenging this disposition, Respondent faults the court for "severing [Susie's] ties to her natural father on the chance that [Petitioner] will marry a boyfriend who could choose to adopt Susie." Respondent fails to reckon with the findings of the "close" relationship and "father-daughter" bond between Susie and Mr. Hicks. Moreover, although not reflected in the court's order, Petitioner testified at the dispositional hearing that she and Mr. Hicks were married on 22 February 2013. To the extent Respondent alludes to his constitutional rights as a parent, we note the court's sole focus at the dispositional stage of termination proceedings is the best interests of the child. *See In re Montgomery*, 311 N.C. at 109, 316 S.E.2d at 251 (describing the child's best interests as "the polar star"). We therefore find no abuse of discretion in the court's decision to

terminate Respondent's parental rights, and so affirm the termination order.

AFFIRMED.

Judges HUNTER, Robert C., and CALABRIA concur.

Report per Rule 30(e).