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NO. COA14-506
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

IN THE MATTER OF:

A.K.D., O.R.D.,
Minor Juveniles

Dare County
Nos. 11 JT 75-76

Appeal by respondent father from orders entered 10 December 2013 by Judge Robert Trivette in Dare County District Court. Heard in the Court of Appeals 6 October 2014.

Evans & Meads, PLLC, by Laura F. Meads, for petitioner-appellee mother.

Mary McCullers Reece for respondent-appellant father.

HUNTER, Robert C., Judge.

Respondent father appeals from the trial court's orders terminating his parental rights to the juveniles A.K.D. and O.R.D. Respondent contends the trial court erred by concluding he had willfully abandoned the juveniles and by determining that termination of his parental rights was in the juveniles' best interests. We affirm.

Background

Petitioner and respondent married in 2008, separated in May of 2010, and divorced in September of 2011. The juveniles were born in 2009 and 2010. The parties had a custody agreement that permitted respondent to have visitation with the juveniles. Respondent initially exercised his visitation rights sporadically after the couple separated.

On 28 October 2011, petitioner filed petitions to terminate respondent's parental rights. The petitions alleged that respondent had not seen either of the juveniles since 6 November 2010 and had not inquired about their wellbeing or sent any gifts for them. Petitioner also alleged that respondent was delinquent on child support payments and had requested termination of his parental rights in order to avoid having to satisfy his support obligation. Accordingly, petitioner contended that respondent had willfully abandoned the juveniles pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2013).

On 13 August 2012, the trial court entered orders terminating respondent's parental rights. At a pretrial hearing, respondent stipulated that he had willfully abandoned the juveniles, and the parties agreed that the only matter at issue was whether termination of respondent's parental rights was in the juveniles' best interests. The trial court accepted

the stipulation and concluded that termination was in the juveniles' best interests. Respondent appealed and argued that the trial court erred by relying on the parties' stipulation to support the ground for termination. This Court reversed the termination orders and remanded for a new hearing. *In re A.K.D.*, __ N.C. App. __, __, 745 S.E.2d 7, 10 (2013).

Petitioner and respondent each testified at the new termination hearing, and the trial court entered new orders terminating respondent's parental rights on 10 December 2013. The trial court concluded that respondent had willfully abandoned the juveniles and that termination of his parental rights was in their best interests. Respondent appeals.

Discussion

In his first argument, respondent contends the trial court erred by concluding he willfully abandoned the juveniles. Respondent argues his difficult financial circumstances and contentious relationship with petitioner prevented him from maintaining contact with or supporting the juveniles. We do not agree.

At the adjudicatory stage of a termination of parental rights hearing, the burden is on the petitioner to prove by clear, cogent, and convincing evidence that at least one ground

for termination exists. N.C. Gen. Stat. § 7B-1109(f) (2013); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Review in the appellate courts is limited to determining whether clear, cogent, and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed, disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

"When the trial court is the trier of fact, the court is empowered to assign weight to the evidence presented at the trial as it deems appropriate." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996). "[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them.'" *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (citation omitted). "[W]here no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal[.]'" *In re S.D.J.*, 192 N.C. App. 478, 486, 665 S.E.2d 818, 824 (2008) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)).

The lone ground the trial court found to support termination of respondent's parental rights was willful

abandonment. "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 T.C.B.*, 166 N.C. App. 482, 485, 602 S.E.2d 17, 19 (2004) (quotation marks and citation omitted). "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). "It has been held that if 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[.]" *Bost v. Van Nortwick*, 117 N.C. App. 1, 18, 449 S.E.2d 911, 921 (1994) (citation and quotation marks omitted), *appeal dismissed*, 340 N.C. 109, 458 S.E.2d 183 (1995). "Although [a parent's] options for showing affection are greatly limited, the respondent will not be excused from showing interest in the child's welfare by whatever means available." *In re Hendren*, 156 N.C. App. 364, 368, 576 S.E.2d 372, 376 (2003).

Petitioner filed the termination petitions in October of 2011. Therefore, the relevant time period for the purpose of

assessing termination based on willful abandonment is the six months prior to the filing of the petition, from April through October 2011. See N.C. Gen. Stat. § 7B-1111(a)(7) (2013); *In re S.R.G.*, 195 N.C. App. 79, 84, 671 S.E.2d 47, 51 (2009).

In this case, the trial court made numerous findings of fact documenting respondent's lack of involvement with the juveniles and the reasons for his absence. Although the parties had a custody order that provided respondent with visitation, respondent did not visit the juveniles between 7 November 2010 and 19 May 2012, including for holidays or birthdays, and did not provide the juveniles with holiday or birthday gifts during that time. Respondent had a history of poor financial decisions that included borrowing heavily from various relatives and creditors. Respondent's financial problems caused instability for the juveniles, and he failed to pay any child support between July 2011 and April 2012. When respondent did work at a boat club in 2012, he accumulated more than \$1,500 in debt for fuel he charged in his short employment time. After respondent failed to pay one-half of the uninsured medical expenses for the juveniles, petitioner filed a motion for contempt on 7 June 2011. That matter was resolved with a consent contempt order, but respondent failed to comply with the terms of that order and

ultimately expressed an interest in relinquishing his parental rights rather than providing for the juveniles. The trial court summed up respondent's relationship with each of the juveniles as follows:

62. The Respondent has not made the minor child a priority in his life and has acted selfishly since the minor child's birth as evidenced by the Respondent's actions since the child's birth. The Respondent chose not to exercise his visitation with the minor child because the permanent custody order was inconvenient for him. . . .

Without questioning the evidentiary support for the trial court's findings, respondent blames his failure to maintain involvement with the juveniles on his financial circumstances and his conflict with petitioner. We are not persuaded.

The trial court's unchallenged findings demonstrate that respondent did not see the juveniles at all during the relevant six-month time period, and is at most an inconsistent and disruptive presence in their lives. As the trial court found, "Respondent attributes both the Petitioner's hostile attitude toward him and his poor financial situation to his failure to see the minor child for 19 months. The Respondent takes no responsibility for his failure to see the minor child for 19 months." Respondent continues that tactic on appeal, and has included in the record correspondence with petitioner that

documents their strained relationship, but we reject his contention that petitioner's anger with him excused him from satisfying his obligations to the juveniles. In fact, the communications tend to document respondent's ongoing failure to make an effort to provide for the juveniles. See *In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009) (rejecting father's argument that mother's behavior prevented him from parenting). Furthermore, contrary to respondent's contention, the trial court's findings regarding his financial situation support its conclusion that respondent was able to support the juveniles, but made a conscious decision not to do so. *Cf.*, *Bost*, 117 N.C. App. at 16-17, 449 S.E.2d at 920-21 (error to find willful abandonment when parent suffered from alcoholism that prevented him from maintaining employment and had visited the juveniles within the relevant six-month period despite not having a driver's license). Accordingly, we disagree with respondent's argument that the trial court erred by concluding he willfully abandoned the juveniles.

In his remaining argument, respondent contends the trial court erroneously found that the lack of an adoptive parent was not a relevant factor in determining the juveniles' best interests and abused its discretion in concluding that

termination of his rights was in the juveniles' best interests. We do not agree.

Once the trial court has determined a ground for termination exists, it moves on to the disposition stage, where it must determine whether termination is in the best interests of the juvenile. N.C. Gen. Stat. § 7B-1110(a) (2013). The trial court's best interests decision is reviewed for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). In determining the best interests of the juvenile, the trial court shall consider the following factors:

- (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.

N.C. Gen. Stat. § 7B-1110(a). The trial court must make written findings addressing the relevant factors. *In re J.L.H.*, ___ N.C. App. ___, ___, 741 S.E.2d 333, 337-38 (2012).

In this case, the trial court found:

64. The likelihood of adoption of the minor child and the quality of the relationship between the minor child and a proposed adoptive placement are not relevant dispositional considerations for the Court in this matter.

Contrary to the first part of respondent's argument, the trial court satisfied the statutory requirement by making findings that the quality of the juveniles' relationships with potential adoptive placements was not relevant in this case. As the trial court also found, the juveniles were well cared for by petitioner and her family. Thus, adoption by another party was not a relevant issue in this private termination matter.

We also reject respondent's contention that the trial court abused its discretion by concluding that termination of his parental rights was in the juveniles' best interests. The trial court found that respondent did not have a bond with the juveniles based on their age and the length of his abandonment, that terminating his parental rights would help ensure the juveniles had a "healthy, stable and consistent childhood," and that it was likely that abandonment would continue if his rights were not terminated. These findings are supported by the evidence, including respondent's expressed desire to relinquish his parental rights to avoid his financial responsibilities and

the continuing erratic nature of respondent's contact with the juveniles.

Conclusion

For the foregoing reasons, we affirm the trial court's orders terminating respondent's parental rights.

AFFIRMED.

Chief Judge MCGEE and Judge ELMORE concur.

Report per Rule 30(e).