NO. COA14-610
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

IN THE MATTER OF: Orange County
No. 09 JT 137

C.W.

Appeal by respondent-father from order entered 18 March 2014 by Judge Beverly Scarlett in Orange County District Court. Heard in the Court of Appeals 20 October 2014.

Wagner Law Firm, P.C., by Lisa Anne Wagner, for petitioner-appellees grandparents.

Mercedes O. Chut for respondent-appellant father.

HUNTER, Robert C., Judge.

Respondent appeals from the trial court's order terminating his parental rights to his son, C.W. After careful review, we affirm.

Background

On 12 November 2009, when C.W. was four months old, the Orange County Department of Social Services ("DSS") filed a petition alleging that C.W. was an abused, neglected, and

dependent juvenile. The petition alleged that C.W. had unexplained bruising on his buttocks, that C.W.'s mother filed a domestic violence protective order ("DVPO") against respondent, that respondent had pending assault on a female charges, and that both of C.W.'s parents had mental health issues. DSS took nonsecure custody of C.W. and placed him with his maternal grandparents, petitioners in the instant action. In an order entered on 30 March 2010, the trial court adjudicated C.W. neglected and dependent and returned C.W. to the custody of his mother. Pursuant to the order, respondent did not have any visitation with C.W. The order also closed the juvenile action and converted it into a civil custody action pursuant to N.C. Gen. Stat. § 7B-911 (2013).

In July 2010, C.W.'s mother established her own residence with C.W., with the support and assistance of petitioners. However, by September 2010, petitioners could not locate C.W.'s mother and became concerned about C.W.'s welfare. Therefore, they contacted DSS, and C.W. was placed with petitioners again on 15 October 2010. On 29 March 2011, petitioners filed a motion in the cause and a motion to intervene in the civil custody action. In an order entered on 17 May 2011, the trial court granted petitioners' motion to intervene, allowed their

motion in the cause, and granted them legal and physical custody of C.W.

On 5 March 2013, petitioners filed a petition to terminate respondent's parental rights to C.W. alleging willful abandonment as the sole ground for termination. *See* N.C. Gen. Stat. § 7B-1111(a)(7) (2013). The trial court conducted a termination hearing on 3 February 2014. In an order entered on 18 March 2014, the trial court found the existence of willful abandonment. In the dispositional portion of the order, the trial court found that termination of respondent's parental rights was in the best interest of the juvenile. Respondent appeals.

Discussion

Respondent first challenges the trial court's ground for termination of his parental rights. We review the trial court's order to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur[.]" *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395 (1996) (citation omitted).

North Carolina General Statute § 7B-1111 provides that the trial court may terminate a parent's 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) (2013). The willful abandonment under this subsection "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 Young*, 346 N.C. 244, 251, 485 S.E.2d 612, 617 (1997) (internal quotation marks omitted). "It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child." *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962). "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).

Respondent purports to challenge the following findings of fact, which are the trial court's ultimate findings in support of abandonment:

> 46. Based upon clear and convincing evidence, Respondent-father has engaged

> in a longstanding course of conduct evidencing his abandonment of the juvenile who is the subject of this action, including:
>
> a. Respondent-father has not made effort to remedy conditions such that he might restore his custodial rights to the juvenile. Respondent-father is incarcerated and it is unclear when he might no longer be so.
>
> b. Either before or during his incarceration, Respondent-father has not contacted Petitioners to inquire about the wellbeing of the juvenile.
>
> c. Either before or during his incarceration, Respondent-father has not attempted to communicate with the juvenile by telephone or letters.
>
> d. Respondent-father has neglected to provide for the support and maintenance of the juvenile; his only support payments having been made to prevent his own incarceration and as the result of an involuntary intercept.
>
> 47. Respondent-father's conduct [shows] his "willful neglect and refusal to perform his natural and legal obligations of parental care and support" . . .

Respondent does not challenge the evidentiary basis for the factual findings, specifically subparts (a) through (d) of finding number 46. We therefore presume that findings 46(a)

through (d) are supported by competent evidence and, consequently, they are binding on appeal. *See In re M.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009).

Instead of challenging the evidentiary support for the findings of fact, he merely challenges the trial court's ultimate finding that he willfully abandoned C.W. Respondent argues that the findings do not support willful abandonment because (1) he was denied "all access" to C.W. by court order and (2) he did not have the means to modify the civil custody order. We are not persuaded. First, we disagree with respondent's characterization of the order. The trial court's 30 March 2010 adjudication and disposition order did in fact divest him of custody and denied him visitation. However, the order did not prohibit respondent from contacting C.W. or from contacting petitioners to inquire into C.W.'s well-being. Nor did the order prohibit respondent from sending C.W. gifts, cards, or other necessities, or from paying child support. Respondent did testify (1) that he purchased items for C.W., but gave them to third parties, and did not know if C.W. ever received them; and (2) that he sent C.W. cards, but could not remember petitioners' zip code. However, it was the trial court's prerogative to weigh the evidence and discredit

respondent's testimony, in light of the grandmother's testimony to the contrary. *See In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) ("The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom.").

We are likewise unpersuaded by respondent's argument that he did not have the means to seek modification of the civil custody order. Respondent argues that he could not afford counsel, and even if he had attempted to modify the order, was not guaranteed to prevail. However, respondent appeared *pro se* in the action, and was not prohibited from filing a *pro se* motion for modification, had he truly desired visitation with C.W. Regardless of whether respondent would have prevailed, even an attempt to seek visitation would have evidenced some desire on respondent's part to parent C.W.

In addition to finding of fact number 46, the trial court made at least eleven other undisputed findings of fact supporting willful abandonment. Finding of fact numbers 18 through 27 and 43 establish the following: that respondent never filed a motion to modify the 17 May 2011 custody order; that petitioners initiated a child support enforcement action against respondent in 2011 and a support obligation was

established for respondent; that respondent on one occasion paid $250 to avoid contempt; that respondent made only one additional child support payment, by way of an income tax refund intercept; that respondent claims to have purchased clothing, food, and other items for C.W. and given them to third parties, but petitioners never received these items; that respondent has not communicated with C.W. by telephone, letter, or any other means since at least October 2010; that respondent has not communicated with petitioners regarding C.W.'s welfare since at least October 2010; and that respondent saw C.W. from a distance at a department store on one occasion, but did not approach or speak to petitioners or C.W.

The findings of fact demonstrate that respondent had no contact with C.W. since October 2010, despite having the ability to maintain some level of contact with his son. *See M.D.*, 200 N.C. App. at 43, 682 S.E.2d at 785-86 (holding that a father had willfully abandoned his children because he had not visited, spoken to, or sent any cards or gifts to them for several years despite having the ability to do so). Therefore, they support the trial court's ultimate finding that his conduct demonstrates "willful neglect and refusal to perform his natural and legal obligations of parental care and support," as well as the

corresponding conclusion of law. *See In re A.P.A.*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982). Accordingly, we find no error in the trial court's adjudication.

In respondent's second argument, he contends that the trial court erred in the dispositional portion of its order. Our juvenile code provides that "[a]fter 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) (2013). In so doing, the trial court is required to consider certain statutory factors and make findings on those that are relevant. *Id.; see also, e.g., In re D.H.*, ___ N.C. App. ___, ___, 753 S.E.2d 732, 735 (2014). We review the trial court's determination that a termination of parental rights is in the best interest of the juvenile for an abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

Respondent argues that the trial court failed to make findings of fact on all relevant factors, specifically the bond between the juvenile and the parent. *See* N.C. Gen. Stat. § 7B-1110(a)(4). This Court has held that while the trial court must consider all six factors, it is only required to make findings on those that are relevant. *See D.H.*, ___ N.C. App. at ___, 753

S.E.2d at 735 ("We do not believe, however, that N.C. Gen. Stat. § 7B-1110(a) requires the trial court to make written findings with respect to *all* six factors; rather, as the plain language of the statute indicates, the court must enter written findings in its order concerning only those factors 'that are relevant.'").

Here, we discern no abuse of discretion on the part of the trial court. The evidence shows that respondent only had a parental relationship with C.W. in the first few months of C.W.'s life prior to DSS involvement. The evidence also shows that respondent had little to no contact with C.W. after C.W. was removed from the parents' home in November 2009, and that C.W. does not ask about his father. Based on the foregoing evidence, it appears that the trial court considered the bond between parent and child and determined that a finding was not relevant due to the lack of any discernable bond. We find no error on the part of the trial court by failing to make this finding.

Conclusion

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

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).