NO. COA14-781
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

IN THE MATTER OF:

R.D.L.

Robeson County
No. 10 JT 206

Appeal by respondent-father from order entered 4 March 2014 by Judge J. Stanley Carmical in Robeson County District Court. Heard in the Court of Appeals 25 November 2014.

No brief filed for petitioner-appellee.

Richard Croutharmel for father, respondent-appellant.

DILLON, Judge.

Respondent-father appeals from the trial court's order terminating his parental rights to the minor child, Ryan[1]. For the reasons discussed herein, we affirm the trial court's order.

I. Background

On 9 August 2010, Robeson County Department of Social Services ("DSS") filed a juvenile petition alleging Ryan was

[1] A pseudonym.

neglected. On that same date, DSS obtained nonsecure custody of Ryan. By order entered 29 October 2010, Ryan was adjudicated neglected. At disposition, the trial court concluded that it was in Ryan's best interest to remain in DSS's custody with placement in a licensed foster home.

The matter came on for a permanency planning hearing on 10 August 2011. The trial court changed the permanent plan to adoption. On 7 October 2011, DSS filed a petition to terminate Respondent-father's and the mother's parental rights. Following a hearing on 14 December 2011, the trial court entered an order on 24 January 2012 terminating the mother's parental rights, but not Respondent-father's.

The case came on for review on 11 January 2012. On 26 January 2012, the trial court entered an order awarding legal guardianship of Ryan to his caretakers, Pamela and Keith[2] ("the Petitioners"). On 26 March 2013, the Petitioners filed a petition to terminate Respondent-father's parental rights. They alleged grounds existed to terminate parental rights on the basis that Respondent-father "willfully abandoned the child for a least six (6) consecutive months immediately preceding the filing of [the] petition" and that Respondent-father "has not

[2] Pseudonyms.

paid child support ever." On 4 March 2014, the trial court entered an order terminating Respondent-father's parental rights. Respondent-father appeals.

II. Analysis

On appeal, Respondent-father argues that the trial court (1) did not have subject matter jurisdiction to terminate his parental rights; (2) erred in concluding that grounds existed to terminate his parental rights based on willful abandonment; and (3) erred in terminating his parental rights based on non-payment of financial support. We address each argument in turn.

A. Jurisdiction

Respondent-father argues the trial court lacked subject matter jurisdiction to terminate his parental rights because the petition was filed in Robeson County and Ryan resided in Scotland County, was not found in Robeson County, and was not in the custody of the Robeson County DSS or a Robeson County child-placing agency at the time the petition to terminate parental rights was filed.

"We review issues relating to subject matter jurisdiction de novo." *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012). Section 7B-1101, entitled "Jurisdiction" provides:

> The court shall have exclusive original jurisdiction to hear and determine any

> petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, *or is in the legal* or actual *custody of a county department of social services or licensed child-placing agency in the district* at the time of filing of the petition or motion. . . .

N.C. Gen. Stat. § 7B-1101 (2013) (emphasis added).

Ryan resided with Petitioners in Scotland County at the time the petition was filed in Robeson County, and Robeson County and Scotland County are in different judicial districts, see N.C. Gen. Stat. § 7A-133 (2013). Further, there was no evidence that Ryan was "found in" Robeson County. However, attached to the 7 October 2011 petition filed by DSS was a 29 August 2011 permanency planning review order stating that Ryan was "currently in the legal care, custody and control of [the Robeson County DSS] . . . pursuant to a nonsecure custody Order entered August 11, 2010." Also included in the record is the nonsecure custody order awarding custody of Ryan to the Robeson County DSS. As Robeson County DSS had custody of Ryan, pursuant to N.C. Gen. Stat. § 7B-1101, the trial court in Robeson County had jurisdiction to terminate Respondent-father's parental rights. His argument is overruled.

B. Willful Abandonment

Respondent-father next contends that the findings of fact do not support the trial court's conclusion that his parental rights should have been terminated based on willful abandonment. Respondent-father argues that findings stating that Petitioners had no contact with him, he had Petitioners contact information, and he never sent letters or cards to Petitioners' home are irrelevant to a conclusion of willful abandonment because six months prior to filing the termination proceeding (1) he was incarcerated and (2) Ryan visited with his paternal relative, in her home. He further argues that findings that he did not speak to Ryan when he made phone calls to that paternal relative were insufficient to find willful abandonment because additional testimony was presented that Respondent-father sent the paternal relative cards and letters and she would read those cards to Ryan. Respondent-father concludes that the trial court "failed to" make a finding regarding this testimony and this testimony established that he did not willfully abandon Ryan and did all that he could do to maintain a parental relationship with Ryan in the six months prior to filing of the petition.

N.C. Gen. Stat. § 7B-1111 sets out the statutory grounds for terminating parental rights. A finding of any one of the separately enumerated grounds is sufficient to support

termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). "The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law." *In re D.J.D.*, 171 N.C. App. 230, 238, 615 S.E.2d 26, 32 (2005) (citation omitted). Unchallenged findings of fact are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

A trial court may terminate parental rights if "[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). Abandonment has been defined as "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 and quotation marks omitted). "[I]f 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." *Id.* "Abandonment implies conduct on the part of the parent which manifests a willful determination to [forgo] all parental duties and

relinquish all parental claims to the child." *In re Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986) (citation omitted). "[A] respondent's incarceration, standing alone, neither precludes nor requires a finding of willfulness" under N.C. Gen. Stat. § 7B-1111(a)(7). *In re McLemore*, 139 N.C. App. 426, 431, 533 S.E.2d 508, 510-11 (2000).

The trial court made the following relevant findings:

> 6. That the minor child has resided with the Petitioners since December of 2010.
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> 7. That the Petitioners were granted guardianship of the minor child on January 11, 2012 by the Honorable J. Stanley Carmical.
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> . . . .
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> 27. That on April 7, 2011, the Respondent Father was sentenced to 100-129 months in the Department of Corrections. His projected release[] date is July 27, 2019. He is currently housed at Lumberton Correctional.
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> . . . .
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> 31. That the Petitioners had no contact with the Respondent Father six months prior to the filing of this action.
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> 32. That the Petitioners provided the phone number and address to the Respondent Father. That the Petitioners have had the same number and same address since the minor child was placed in the home.
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> 33. That the Respondent Father has never

> sent any letters or cards to the home of the Petitioners.
>
> . . . .
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> 36. That the Petitioner, [Pamela], supervised visits with the Paternal Aunt . . . from November of 2012 until April of 2013. That the Respondent Father would call to speak to the other children in the home but did not speak with [Ryan] during these supervised visits.
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> . . . .
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> 40. That the Respondent Father was under a child support order and has never provided financial support of the minor child.
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> 41. That the minor child has had three surgeries since being placed in the home of the Petitioners. That the Respondent Father did not communicate with the Petitioners to show concern about the health of the minor child.
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> . . . .
>
> 45. That the Respondent Father has never paid support for the use and benefit of the minor child since he has been in the Petitioner[s'] care.

Based on these findings, the trial court concluded that grounds existed to terminate Respondent-father's parental rights based on willful abandonment. Although the willfulness of a parent's conduct "is a question of fact to be determined from the evidence[,]" *Searle*, 82 N.C. App. at 276, 346 S.E.2d at 514, it is immaterial that the court labeled its finding of willfulness

by respondent-father a conclusion of law. *See State v. Hopper*, 205 N.C. App. 175, 179, 695 S.E.2d 801, 805 (2010) (reviewing a mislabeled "conclusion of law" as a finding of fact).

We also note that Respondent-father makes no challenge to these findings of fact as being not support by evidence in the record and, therefore, they are binding on appeal. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. His lone challenge related to the findings is that the trial court failed to make findings regarding testimony that Ryan's paternal aunt read letters and cards he sent to Ryan. But the trial court was free to disregard any testimony that it chose in making its findings. In a bench trial, the trial court as the finder of fact has the prerogative to "weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." *In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (citation omitted). Therefore, the trial court did not err in not making these findings; and Respondent-father's argument is overruled.

Turning to the substantive argument, we note that even though the relevant period for abandonment would be from 26 September 2012, six-months prior to the filing of the petition

to terminate Respondent-father's parental rights on 26 March 2013, the trial court found that Respondent-father had *never* sent letters or cards to Petitioners, *never* shown concern for Ryan's health problems, and *never* had paid any financial support "since [Ryan] ha[d] been in the Petitioner[s'] care[,]" despite being obligated to by a child support order. Even during the relevant six-month time period, the trial court found that Respondent-father had no contact with Petitioners, Petitioners had given Respondent-father their phone number and address and that contact information had not changed, and when he had the opportunity to talk to Ryan during visits to his paternal aunt, Respondent-father spoke to the other children there, but "did not speak with [Ryan][.]" Contrary to Respondent-father's argument, it would be relevant whether he contacted Petitioners, as the trial court found that Ryan had been residing with Petitioners since December 2010, they were his legal guardians, and, during the relevant period of time, Ryan would have been only two years old and in need of Petitioners' assistance in communicating with Respondent-father, especially since he was incarcerated and could only communicate by mail or phone.

We believe that the findings show that even with his limited ability due to his incarceration, Respondent-father,

when having or presented with the opportunity withheld "his presence, his love, his care, the opportunity to display filial affection, and [had] wilfully neglect[d] to lend support and maintenance," see *Humphrey*, 156 N.C. App. at 540, 577 S.E.2d at 427, to Ryan. Accordingly, the trial court's findings support its conclusion that there were grounds to terminate Respondent-father's parental rights based on willful abandonment.

Because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(7)(willful abandonment) to support the trial court's order, we need not address the remaining grounds found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34. Accordingly, we affirm.

AFFIRMED.

Judge STROUD and Judge DIETZ concur.

Report per Rule 30(e).