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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-371

Filed: 15 November 2016

Ashe County, No. 14 JT 34

IN RE: M.J.H.

Appeal by respondent from order entered 5 January 2016 by Judge David Von Byrd in Ashe County District Court. Heard in the Court of Appeals 10 October 2016.

John Benjamin “Jak” Reeves, for petitioner-appellee mother.

N. Elise Putnam, for respondent-appellant father.

Anné C. Wright, for guardian ad litem.

CALABRIA, Judge.

Respondent appeals from the trial court’s order terminating his parental rights. After careful review, we affirm.

I. Factual and Procedural Background

Respondent is the father of the juvenile, M.J.H. Petitioner is the juvenile’s mother. In 2008, respondent, who was employed as a long distance truck driver, forced petitioner to go on a trip from North Carolina to California and back. During the trip, respondent beat and tortured petitioner in the presence of the juvenile. During this time, petitioner was unable to feed and care for the juvenile, who was still not yet three years old. Respondent was eventually apprehended in Oklahoma.

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The juvenile was placed in the custody of Ashe County Department of Social Services and subsequently adjudicated a neglected juvenile. The juvenile was returned to petitioner's custody in 2009 and has remained in her care and custody since that time. Respondent has been incarcerated in West Virginia since 2012 upon convictions for interstate kidnapping and domestic violence related to the events which occurred in 2008.

On 6 October 2014, petitioner filed a petition to terminate respondent's parental rights. Petitioner claimed that grounds existed to terminate respondent's parental rights because respondent had: (1) abused and neglected the juvenile; (2) willfully failed without justification to pay for the care, support, and education of the juvenile; and (3) willfully abandoned the juvenile. *See* N.C. Gen. Stat. § 7B-1111(a)(1), (4), and (7) (2015). On 20 January 2015, respondent filed an answer denying the material allegations in the petition. On 5 January 2016, the trial court terminated respondent's parental rights. Respondent filed timely notice of appeal.

II. Termination of Parental Rights

Respondent contends that the trial court erred by concluding that grounds existed to terminate his parental rights. We disagree.

A. Standard of Review

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

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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).

B. Analysis

Pursuant to N.C. Gen. Stat. § 7B-1111(a)(7), the trial court may terminate parental rights where “[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion[.]” “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. 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) (citations and quotations omitted). Factors to be considered include a parent’s financial support for a child and “emotional contributions,” such as “respondent’s display of love, care and affection for his children.” *In re McLemore*, 139 N.C. App. 426, 429, 533 S.E.2d 508, 510 (2000) (citations and quotations omitted).

Here, regarding respondent’s willful abandonment of the juvenile, the trial court made the following findings of fact:

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14. The last contact the Petitioner or Juvenile have had [] with the Respondent was over two years ago, more than a year prior to the filing of this action. This was in the form of a letter sent to a family member of the Respondent and given to the Petitioner. The Respondent has not attempted any other or further contact.

15. The Respondent has not provided for the care and support of the Juvenile since 2008. The Respondent submitted an affidavit stating that he pays the sum of \$25 every three months. The affidavit does not specify whether this money is for child support. Regardless, the Petitioner denied ever receiving said monies, and no proof or receipt was provided to the Court.

16. The Respondent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition.

We are bound by those findings not challenged by respondent on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (unchallenged findings are deemed supported by competent evidence and are binding on appeal). Moreover, we review only those findings necessary to support the trial court's conclusion that the juvenile was abandoned. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error).

Respondent argues that finding of fact number 14 is not supported by competent evidence. Respondent claimed that he had sent the juvenile an Easter card, and had attempted other contact through family members. Respondent states in his affidavit, however, that his last contact with the juvenile was "one and a half

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to two years ago.” Petitioner also testified that she last communicated with respondent more than one year prior to filing the petition to terminate respondent’s parental rights. Consequently, we conclude that the trial court’s finding is supported by the evidence.

Respondent additionally argues that he had no meaningful way of contacting the juvenile due to an alleged no-contact order and his incarceration, and thus he did not willfully abandon the juvenile. We are not persuaded. A showing of incarceration alone is insufficient to prove willful abandonment. *In re Blackburn*, 142 N.C. App. 607, 612, 543 S.E.2d 906, 909 (2001) (citing *In re Adoption of Maynor*, 38 N.C. App. 724, 726-27, 248 S.E.2d 875, 877 (1978)). As this Court has noted, however, when considering a respondent parent’s incarceration with respect to another ground for termination (neglect), “ ‘[a]lthough his options for showing affection are greatly limited, *the respondent will not be excused from showing interest in his child’s welfare by whatever means available.*’ ” *In re J.L.K.*, 165 N.C. App. 311, 318-19, 598 S.E.2d 387, 392 (emphasis added) (quoting *Whittington v. Hendren*, 156 N.C. App. 364, 368, 576 S.E.2d 372, 376 (2003)), *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004).

In the instant case, the evidence demonstrates that despite the existence of a possible no-contact order and his incarceration, respondent had the ability to contact the juvenile. Petitioner testified that while respondent did not know her address, his grandmother knew where she lived and how to contact her. Furthermore, he

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previously had sent an item to his grandmother, who had then passed it on to petitioner and the juvenile. Thus, despite having some ability to contact the juvenile, respondent failed to do so during at least the six consecutive months immediately preceding the filing of the petition. Furthermore, the trial court determined that respondent failed to pay petitioner to support the juvenile. *See In re C.J.H.*, __ N.C. App. __, __, 772 S.E.2d 82, 92 (2015) (affirming finding of abandonment where “respondent did not visit the juvenile, failed to pay child support in a timely and consistent manner, and failed to make a good faith effort to maintain or reestablish a relationship with the juvenile”). Accordingly, we hold that the trial court properly determined that respondent willfully abandoned M.J.H.

Respondent additionally argues that the trial court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (4) to terminate his parental rights. However, because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) to support the trial court’s order, we need not address the remaining ground found by the trial court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34.

III. Best Interests

Respondent next argues that the trial court abused its discretion by determining that it was in the juvenile’s best interests to terminate respondent’s parental rights. We disagree.

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Respondent contends that the trial court improperly shifted the burden to him to show why his parental rights should not be terminated. Respondent cites the trial court's finding that respondent had "not offered sufficient evidence that it would not be in the best interest of the minor child to terminate his parental rights." However, a similar argument was rejected by this Court in *In re Clark*, 72 N.C. App. 118, 125, 323 S.E.2d 754, 758-59 (1984). In *Clark*, the trial court made a finding that "evidence has not been presented to refute the essential allegations contained in the Petition. . . ." *Id.* at 125, 323 S.E.2d at 758. On appeal, we determined that the finding was not an improper shifting of the burden, but rather "an accurate statement of the procedural stance of the case. The finding recites only that the respondents did not produce evidence that contradicted the allegations set forth in the petition." *Id.* We find *Clark* to be persuasive. In the instant case, respondent did not attend the termination hearing, and his evidence consisted solely of his own, two-page affidavit. The trial court's finding is merely acknowledgement that respondent failed to present evidence to rebut the allegations that it would be in the juvenile's best interests to terminate his parental rights. Accordingly, we conclude that the trial court did not improperly shift the burden of proof to respondent.

IV. Findings of Fact

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Respondent further challenges the trial court's findings of fact and its determination that those findings supported termination of his parental rights. We disagree.

A. Standard of Review

After an adjudication that one or more grounds for terminating a parent's rights exist, the trial court must determine whether terminating the parent's rights is in the juvenile's best interests by considering the following criteria:

- (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) (2015). This Court reviews the trial court's best interests determination for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the

result of a reasoned decision.” *State v. Roache*, 358 N.C. 243, 284, 595 S.E.2d 381, 408 (2004) (citations and quotations omitted).

B. Analysis

At disposition, the trial court made the following findings of fact:

19. The minor child is nine years old. The last time the Respondent saw the juvenile was when the child was two years old.

20. The minor child has not had a relationship with the Respondent, and will not for several years. The Respondent has been incarcerated virtually the entire life of the child.

21. The Respondent will not be released from prison until 2022 at the earliest.

22. The Guardian Ad Litem testified that the minor child does not express a bond with the Respondent, but rather focuses on wanting to change her last name.

23. The likelihood of adoption of the minor child . . . is good, albeit not immediate, and it would be in the best interests of the juvenile. The Petitioner testified that her boyfriend of 6 years, . . . is very closely bonded with the Juvenile.

24. The minor child and the Petitioner have a very close bond, as the Petitioner has provided for all of the child’s needs her entire life. The Guardian Ad Litem testified to the close bond between the Petitioner and the juvenile.

. . .

26. The minor child is thriving in the home of the Petitioner.

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27. The Court finds that the Respondent's neglect of the Juvenile, alone, would be sufficient grounds to terminate his parental rights.

28. Termination of the Respondent's parental rights will aid in the permanency plan for the juvenile by providing a stable lifestyle, including a good education and extracurricular activities.

29. Respondent has not been a factor in the child's life whatsoever for many years.

30. The quality of the relationship between the Petitioner and child is excellent and proper.

...

32. The Respondent has abandoned the Juvenile and failed to support the juvenile.

33. The Respondent has not made every effort to contact the child. There was no evidence that Respondent did not know that a letter sent two years ago did not make it to the child, but never the less, he made no further attempts to contact her.

...

35. There is a likelihood of future abuse or neglect of the Juvenile by the Respondent.

Respondent challenges dispositional findings 20, 23, 27, 28, 32, 33, and 35. We review dispositional findings only to determine if they "are supported by competent evidence," in which case "they are conclusive on appeal." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003) (citations omitted).

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Respondent argues that finding number 20, that he has been incarcerated virtually all the life of the juvenile, is inaccurate, noting that he was not incarcerated until she was almost three years of age. The juvenile, however, was almost ten years old at the time of the hearing. While the trial court's finding could have been more artfully worded, it correctly points out that respondent has been incarcerated for a significant portion of the juvenile's life.

Respondent next argues that the trial court's finding number 23, that the prospects for adoption were "good, albeit not immediate" is unsupported by the evidence. Here, petitioner testified that her boyfriend was bonded to the juvenile, and that it was her hope that "one day" he would adopt her. Petitioner conceded, however, that her boyfriend was not yet ready to adopt M.J.H. We conclude that the trial court's inference that the prospects of adoption were "good" was permissible based on petitioner's testimony, and we find no error in the trial court's finding of fact.

Respondent argues that findings of fact number 27, 32, 33, and 35 were erroneous. We find the trial court's findings were inappropriately placed in the dispositional order. These findings were relevant to the adjudicatory order, as they related to the existence of grounds to terminate respondent's parental rights. As stated previously herein, we have determined that the trial court properly concluded that grounds existed to terminate respondent's parental rights.

Respondent next argues that finding of fact number 28 is unsupported by the evidence. Respondent further contends that there was no evidence regarding how termination would provide a better education or extracurricular activities for the juvenile. We agree. Because the juvenile was in the custody of her mother, there was no permanent plan for the juvenile as contemplated by the Juvenile Code. Thus, N.C. Gen. Stat. § 7B-1110(a)(3) is inapplicable to the instant case, and the trial court's finding is misplaced.

Despite the fact that some of the trial court's dispositional findings were erroneous or inappropriately placed in the dispositional portion of the order, we find no abuse of discretion in the trial court's determination that it was in the juvenile's best interests to terminate respondent's parental rights. The trial court's proper findings demonstrate that the juvenile has no relationship with respondent, who will be incarcerated until at least 2022. The juvenile expresses no interest in developing a relationship with respondent, and wishes to change her name. The juvenile also has a close bond with petitioner, and there is hope that by terminating respondent's parental rights, she might eventually be adopted by petitioner's boyfriend, to whom she also is closely bonded. Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges STROUD and INMAN concur.

Report per Rule 30(e).