

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-663

Filed: 21 March 2017

Guilford County, No. 14 JT 79

IN THE MATTER OF: E.P.H.

Appeal by Respondent-Father from order entered 7 April 2016 by Judge Wendy M. Enochs in District Court, Guilford County. Heard in the Court of Appeals 27 February 2017.

Mercedes O. Chut for Petitioner-Appellee Guilford County Department of Health and Human Services.

David A. Perez for Respondent-Appellant Father.

Ellis & Winters LLP, by Emily E. Erixson, for Guardian ad Litem.

McGEE, Chief Judge.

Respondent appeals from order terminating his parental rights to his child, E.P.H. (“the child”). The child’s mother (“the mother”) is not a party to this appeal. We affirm the trial court’s order.

I. Background

The child was born on 30 January 2013. Prior to the child’s birth, the mother informed Respondent that she was pregnant and that he might be the child’s father. Respondent offered to take a paternity test, but the mother “said nothing else about

it.” Respondent made no further attempts to determine whether he was the child’s father. According to the mother, she and Respondent communicated “a couple of times” before and after the child’s birth, and Respondent “knew the day [the child] was born.” Respondent never provided any financial support to the mother for the support of the child.

The Guilford County Department of Health and Human Services (“DHHS”) assumed custody of the child in August 2014 after receiving reports of drug abuse by the mother, family violence, and sexual abuse of the child’s siblings by the mother and the mother’s boyfriend. At the time the child entered DHHS custody, her father was unknown. The mother informed a DHHS social worker (“the social worker”) that Respondent might be the child’s father on 12 February 2015. The social worker visited Respondent’s residence on 23 March 2015 and spoke with Respondent’s mother, who told the social worker Respondent lived there but was not home. The social worker informed Respondent’s mother that Respondent might be the child’s father and that the child was in DHHS custody. Respondent’s mother said she would have Respondent contact the social worker. Respondent did not contact the social worker following that visit. However, the child’s mother contacted the social worker on or about 31 March 2015 and “stated that [Respondent] sent her a text message [saying] that he was going to get custody of [the child] and . . . [that the mother] was never going to see [the child] again.” The social worker returned to Respondent’s

residence on 1 May 2015 and spoke with Respondent's stepbrother, who informed the social worker that Respondent was not at home. The social worker again returned to Respondent's residence on 10 July 2015 and heard footsteps inside the home, but no one answered the door.

The social worker sent letters to Respondent's residence on 21 September and 30 October 2015.¹ Respondent contacted the social worker for the first time on 2 November 2015. Respondent submitted to a paternity test that same day, which later confirmed he was the child's biological father. DHHS filed a petition to terminate Respondent's parental rights ("petition" or "termination petition") on 16 November 2015, alleging the grounds that: (1) Respondent had neglected the juvenile; (2) Respondent willfully left the juvenile in foster care or placement outside of the home for more than twelve months without showing reasonable progress in correcting the conditions that led to the removal of the juvenile; (3) the juvenile had been placed in DHHS custody and, for a continuous period of six months preceding the filing of the petition, Respondent had willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so; (4) Respondent failed to legitimate the juvenile; and (5) Respondent willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1)-(3), (5), (7) (2015). Following a 21 March 2016

¹ The DHHS letter sent on 30 October 2015 was sent by certified mail, and Respondent signed for the letter on 31 October 2015.

hearing on the termination petition, the trial court entered an order on 7 April 2016 terminating Respondent's parental rights to the child after adjudicating the existence of the last four grounds alleged in the petition. Respondent filed a written notice of appeal on 14 April 2016.

II. Willful Abandonment

Respondent first contends the trial court erred in finding that grounds existed to terminate his parental rights. We conclude the trial court properly found Respondent's parental rights were subject to termination on the basis of willful abandonment.

A. Standard of Review

Termination of parental rights involves two stages, adjudication and disposition, and different standards of analysis apply to each stage. *In re D.R.B.*, 182 N.C. App. 733, 735, 643 S.E.2d 77, 79 (2007). During the adjudication phase, the trial court "examines the evidence and determines whether sufficient grounds exist under N.C. Gen. Stat. § 7B-1111 to warrant termination of parental rights." *In re T.D.P.*, 164 N.C. App. 287, 288, 595 S.E.2d 735, 736 (2004) (citation omitted), *aff'd per curiam*, 359 N.C. 405, 610 S.E.2d 199 (2005). The focus is upon "whether the parent's individual conduct satisfies one or more of the statutory grounds which permit termination." *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007). If the court determines one or more grounds exist for terminating a parent's rights, it then

proceeds to the disposition phase and makes a discretionary determination as to whether terminating the parent's rights is in the juvenile's best interest. N.C. Gen. Stat. § 7B-1110(a) (2015).

At the adjudicatory stage, the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist. If the trial court concludes that the petitioner has proven grounds for termination, this Court must determine on appeal whether the court's findings of fact are based upon clear, cogent[,] and convincing evidence and [whether] the findings support the conclusions of law. Factual findings that are supported by the evidence are binding on appeal, even though there may be evidence to the contrary. Where 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.

Under N.C. Gen. Stat. § 7B-1111(a), the trial court need only find that one statutory ground for termination exists in order to proceed to the dispositional phase and decide if termination is in the child's best interests.

In re L.A.B., 178 N.C. App. 295, 298-99, 631 S.E.2d 61, 64 (2006) (citations and internal quotation marks omitted). The trial court's conclusions of law are reviewable *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).

B. Analysis

1. Findings of Fact

N.C. Gen. Stat. § 7B-1111(a)(7) (2015) permits a trial court to terminate parental rights upon finding that “[t]he parent has willfully abandoned the juvenile

Opinion of the Court

for at least six consecutive months immediately preceding the filing of the [termination] petition[.]” This ground requires proof of conduct that “manifests a willful determination to forego all parental duties and relinquish all parental claims to the child[.]” *In re S.R.G.*, 195 N.C. App. 79, 84, 671 S.E.2d 47, 51 (2009) (quoting *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986)). Abandonment exists “where a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance.” *In re D.J.D.*, 171 N.C. App. 230, 241, 615 S.E.2d 26, 33 (2005) (citation, internal quotation marks, and brackets omitted).

In the present case, DHHS filed its petition to terminate Respondent’s parental rights on 16 November 2015. Thus, under N.C.G.S. § 7B-1111(a)(7), the relevant six-month period began on 16 May 2015. The trial court made two findings addressing Respondent’s intentional abandonment of the child, both of which Respondent challenges on appeal:

[21b]. During the six-month period, [Respondent] did not provide any letters, cards, or other tokens of affection for the juvenile, did not provide the juvenile with any financial support, and did not even contact the [s]ocial [w]orker to inquire how the juvenile was doing. [Respondent] essentially evaded [DHHS] efforts to engage him and offer him the opportunity to come forward to assert paternity during the six-month period. [Respondent] failed to perform the natural and legal parental obligations of care and support for the juvenile, withheld his love and presence from the juvenile, and deprived the juvenile of the opportunity to display filial affection. [Respondent’s]

Opinion of the Court

conduct from [16 May 2015] to [16 November 2015] was wholly inconsistent with a desire to gain custody of the juvenile and evinced a purposeful intention to forego his parental rights and responsibilities to the juvenile.

. . . .

[29b]. [Respondent] essentially evaded [DHHS] attempts to contact him and offer him the opportunity to establish his paternity and work towards reunification with the juvenile for eight months, since March 2015. During that entire eight months, [Respondent] was aware that he could possibly be the father of the child because he had been informed by the mother when she was pregnant in 2012, and he subsequently fathered a[nother] child with his fiancé; that child was born in 2015. [Respondent] did not contact [DHHS] regarding [the child] until [2 November 2015]. . . . [Respondent's] extreme delay in coming forward to assert paternity and engage [DHHS] with regards to the juvenile call into serious doubt that any claims he makes now as to his commitment to the juvenile are in fact sincere.

Specifically, Respondent challenges the trial court's statement in finding [21b.] that he "essentially evaded [DHHS] efforts to engage him and offer him the opportunity to come forward to assert paternity during the six-month period."² Respondent contends the evidence does not show he was aware DHHS had custody of the child prior to 31 October 2015, when he received the letter from the social worker. We conclude the trial court's finding is supported by clear and convincing evidence.

² Respondent also challenges the substantially similar statement in finding [29b.] that Respondent "essentially evaded [DHHS] attempts to contact him and offer him the opportunity to establish his paternity and work towards reunification with the juvenile for eight months, since March 2015." Our analysis of the statement in finding [21b.] applies with equal force to the similar statement in finding [29b.].

Opinion of the Court

At the termination hearing, the social worker testified she visited Respondent's residence in March and May 2015. While Respondent was not home either time, the social worker informed Respondent's mother and stepbrother that Respondent might be the child's father, and left her contact information. Respondent's mother informed the social worker that she would have Respondent contact the social worker. Respondent later contended his mother never told him about the social worker's visit on 23 March 2015. However, the social worker testified that on or about 31 March 2015, she was contacted by the mother, who told the social worker Respondent had sent her a text message indicating he was going to get custody of the child. The social worker had not informed the mother about the 23 March 2015 visit to Respondent's residence, and the social worker believed the only way the mother could have known about the visit was through communication with Respondent. Thus, there was evidence that, as of late March, Respondent knew of (1) the social worker's attempt to contact him regarding the child; (2) the remaining possibility that he could be the child's father; and (3) the fact that the child was in DHHS custody. The social worker visited Respondent's residence a third time on 10 July 2015. Although the social worker heard footsteps in the home, no one answered the door. The social worker also sent a letter to Respondent's residence in September. Considered together, this evidence supported a finding that Respondent was aware of the attempts by DHHS to contact him prior to 31 October 2015.

Opinion of the Court

Respondent further notes he contacted DHHS and submitted to paternity testing several weeks prior to 16 November 2015. He contends that, as a result, the finding that he essentially evaded DHHS “during the pertinent six month time period” was not supported by the evidence. It is true that Respondent contacted DHHS and submitted to a paternity test on 2 November 2015.³ However, given that the trial court could reasonably find Respondent was aware in March 2015 of the first attempt by DHHS to contact him, but did not contact DHHS and submit to paternity testing until approximately seven months later, when less than three weeks remained in the relevant six-month period, we cannot say the trial court erroneously found that Respondent “essentially evaded” DHHS during the six-month period. *See Searle*, 82 N.C. App. at 276, 346 S.E.2d at 514 (concluding respondent’s single child support payment during relevant six-month period did not preclude a finding of willful abandonment).

Respondent does not challenge the remaining portion of the findings quoted above and those findings are, therefore, binding on appeal. *See In re A.R.*, 227 N.C. App. 518, 520, 742 S.E.2d 629, 631 (2013). While Respondent challenges several additional findings not quoted above, we need not review those findings because they are not necessary to support the trial court’s conclusion that Respondent willfully abandoned the child. *See, e.g., In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236,

³ The results of the paternity test were returned on 9 November 2015 and, according to Respondent, relayed to him on 12 December 2015.

240 (2006) (holding erroneous findings unnecessary to support adjudication of neglect did not constitute reversible error).

2. Conclusions of Law

In challenging the trial court’s legal conclusion that Respondent abandoned the child, Respondent contends he could not have “willfully” abandoned the child without knowing the mother’s whereabouts or contact information and without having “any knowledge whatsoever as to the location or circumstances regarding [the child] until he received the certified letter from DHHS in October, 2015.” We disagree.

“Willfulness is more than an intention to do a thing; there must also be purpose and deliberation. 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 S.R.G.*, 195 N.C. App. at 84, 671 S.E.2d at 51 (citation and internal quotation marks omitted).

A judicial determination that a parent willfully abandoned her child, particularly when we are considering a relatively short six month period, needs to show more than a failure of the parent to live up to her obligations as a parent in an appropriate fashion; the findings must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody of the child.

Id. at 87, 671 S.E.2d at 53.

This Court has held that a parent “will not be excused from showing interest in [a] child’s welfare *by whatever means available*[,]” even if “his options for showing

affection [were] greatly limited.” See *In re R.R.*, 180 N.C. App. 628, 634, 638 S.E.2d 502, 506 (2006) (citation and quotation marks omitted) (emphasis added) (rejecting respondent-father’s argument that “he did not willfully abandon the child because he was not given the opportunity to participate in the child’s life[.]”). In *In re J.M.L.*, 236 N.C. App. 657, 765 S.E.2d 554, 2014 WL 4978640 (2014) (unpublished), the respondent initially requested that the mother arrange for DNA testing upon learning that he might be the father, but requested that the mother travel from Florida to Pennsylvania for the testing and made no further effort to contact the mother when she did not make such arrangements. The respondent argued on appeal that “absent evidence that he knew of his daughter’s whereabouts or contact information [during the relevant six-month time period] . . . he [could not] be held to have willfully withheld . . . indications of his parental affection[.]” *Id.*, 2014 WL 4978640 at *6. In affirming the trial court’s termination of the respondent’s parental rights under N.C.G.S. § 7B-1111(a)(7), this Court found that the respondent erroneously assumed he “[was] not accountable for his inaction toward [the child] prior to being contacted by [the Department of Social Services].” *Id.* at *7; cf. *In re Maynor*, 38 N.C. App. 724, 726-27, 248 S.E.2d 875, 877 (1978) (finding abandonment was not willful, where evidence showed respondent was in fact unable to locate the child and unaware child had been placed in Department of Social Services custody).

Opinion of the Court

As discussed above, the evidence in the present case showed that (1) Respondent knew he might be the child's father when the mother first became pregnant in 2012; (2) Respondent became aware in late March 2015 that DHHS was attempting to contact him and that the child was in DHHS custody; and (3) Respondent had the ability to communicate with the mother as of that time. Nevertheless, Respondent made no attempt to contact DHHS to inquire about the child or establish his paternity until approximately seven months later. Respondent made no effort to support the child, financially or otherwise, during the six-month period preceding the filing of the termination petition. He did not send the child gifts or letters or seek any visitation. Respondent's deliberate inaction was "wholly inconsistent with a desire to maintain custody" of the child. *See In re S.R.G.*, 195 N.C. App. at 87, 671 S.E.2d at 53. We conclude the trial court's findings of fact supported a conclusion that Respondent willfully abandoned the child for at least six consecutive months immediately preceding the filing of the termination petition.

While Respondent also challenges the trial court's conclusions that grounds for termination existed under N.C.G.S. §§ 7B-1111(a)(2), (3), and (5), we need not address those arguments given our decision that Respondent's parental rights were properly terminated pursuant to N.C.G.S. § 7B-1111(a)(7). *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003) ("A finding of any one of the enumerated grounds

for termination of parental rights under N.C.G.S. [§] 7B-1111 is sufficient to support a termination.” (citation omitted)).

III. Best Interests Determination

Respondent also argues the trial court abused its discretion in finding that it was in the child’s best interests to terminate Respondent’s parental rights. We disagree.

A. Standard of Review

“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) (2015). A trial court’s determination of the child’s best interests is reviewed for abuse of discretion and is reversible “only where [the court’s decision] is ‘manifestly unsupported by reason.’” *In re S.N.*, 194 N.C. App. at 146, 669 S.E.2d at 59 (quoting *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980)).

B. Analysis

In concluding it was in the child’s best interests to terminate Respondent’s parental rights, the trial court found that Respondent “failed to make himself known and available to parent [the child] until recently” and that Respondent’s “efforts toward reunification began after the filing of the Petition to Terminate Parental Rights.” Respondent again challenges the finding that he “failed to make himself

Opinion of the Court

known and available to parent [the child]” and contends that, upon hearing from DHHS and confirming his paternity, he acted swiftly to reunify with the child. However, as discussed above, the trial court’s findings regarding Respondent’s awareness that he may have been the child’s father, and his knowledge of attempts by DHHS to contact him approximately seven months prior to 31 October 2015, were supported by clear and convincing evidence. *See In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (noting that findings of fact are binding if supported by some evidence, even though the evidence may sustain contrary findings).

Respondent does not challenge the trial court’s remaining findings related to its best interests determination. Those findings demonstrate that: (1) the child was three years old at the time of the hearing; (2) the child’s likelihood of adoption was high given her young age and her foster parents’ expression of the desire to adopt her; (3) terminating parental rights would facilitate the permanent plan of adoption; (4) there was no bond between the child and Respondent, as they had never met; and (5) the quality of the relationship between the child and her foster parents was high. *See* N.C.G.S. §§ 7B-1110(a)(1)-(6) (listing relevant factors for a trial court to consider in determining whether terminating the parent’s rights is in the juvenile’s best interest). Given these findings, we cannot say the trial court’s determination that it

IN RE: E.P.H.

Opinion of the Court

was in the child's best interests to terminate Respondent's parental rights was manifestly unsupported by reason.

IV. Conclusion

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

AFFIRMED.

Judges STROUD and McCULLOUGH concur.

Report per Rule 30(e).