IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-11

Filed: 7 August 2018

New Hanover County, Nos. 15 JT 167–68

IN THE MATTER OF: C.R.R. and E.K.R.

Appeal by respondent-father from order entered 28 August 2017 by Judge J.H. Corpening, II in New Hanover County District Court. Heard in the Court of Appeals 7 June 2018.

James Zisa Attorneys, P.A., by James Zisa, for petitioner-appellee mother.

The Lea/Schultz Law Firm, P.C., by James W. Lea, III, for respondent-appellant father.

DIETZ, Judge.

Respondent appeals from an order terminating his parental rights to his two minor children. As explained below, the trial court's findings are supported by clear and convincing evidence and those findings, in turn, support the court's conclusion that Respondent willfully abandoned his children. Accordingly, we affirm the trial court's order.

Facts and Procedural History

Petitioner and Respondent are the parents of two minor children born in 2009 and 2010. The parties separated in 2010 shortly before their second child was born. In 2012, Petitioner, the children's mother, filed a complaint for child custody, child support, and alimony. Respondent, the children's father, did not attend the custody proceeding or appear for any hearings related to the custody action. The trial court awarded Petitioner sole custody of the children with reasonable visitation for Respondent, who now lived in New Jersey.

In 2015, Petitioner filed this action to terminate Respondent's parental rights based on abandonment. In August 2016, the trial court held a hearing on the termination petition and, at the conclusion of the hearing, stated that it would terminate Respondent's parental rights. The trial court did not enter its written order until August 2017, more than a year later. Respondent timely appealed the written order.

Analysis

On appeal, Respondent argues (1) that the trial court failed to enter its written order within the statutory time frame; (2) that there was insufficient evidence to support the court's findings of abandonment; and (3) that termination of Respondent's parental rights was not in his children's best interests. We address these arguments in turn below.

I. Delay in Filing the Written Order

Respondent first argues that the trial court committed reversible error by failing to enter its written order within the required statutory time period. Section 7B-1110 of the General Statutes provides that an order terminating parental rights "shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing." N.C. Gen. Stat. § 7B-1110(a).

Petitioner does not dispute that the trial court violated this statutory requirement. But the relief Respondent seeks on appeal—for this Court to vacate the trial court's order as untimely—is barred by a long line of controlling cases. *See In re T.H.T.*, 362 N.C. 446, 450–53, 665 S.E.2d 54, 57–59 (2008). Under this precedent, "mandamus is the proper remedy when the trial court fails to hold a hearing or enter an order as required by statute." *Id.* at 454, 665 S.E.2d at 59. "The time-sensitive nature of child welfare cases makes mandamus particularly appropriate in cases such as this, when Respondent asserts entitlement to the taking of action by the trial court within a relatively brief timeframe." *In re K.I.*, 233 N.C. App. 786, 759 S.E.2d 710, 2014 WL 1794879, at *5 (2014) (unpublished). "Despite the expedited nature of appeals filed pursuant to N.C. R. App. P. 3.1, it is apparent that appeal is not a viable means to enforce a statutory hearing deadline in juvenile abuse, neglect, and dependency proceedings." *Id.*

Accordingly, we reject Respondent's argument. His remedy for the trial court's failure to timely enter its written order was to petition for a writ of mandamus. Under *In re T.H.T.*, this Court lacks authority to vacate or reverse the trial court's order on direct appeal because it was not filed within the statutory time period.

II. Sufficiency of the Evidence of Abandonment

Respondent next challenges the sufficiency of the evidence supporting the trial court's findings in the termination order. A trial court may terminate parental rights if it finds by clear and convincing evidence that a 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), (b). As explained below, we hold that the trial court's findings in this case are supported by clear and convincing evidence in the record.

"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. The findings must clearly show that the parent's actions are wholly inconsistent with a desire to maintain custody of the child." *In re C.J.H.*, 240 N.C. App. 489, 503–04, 772 S.E.2d 82, 92 (2015). Factors the trial court should consider in evaluating a claim of abandonment include the parent's financial support for the child and "emotional contributions," such as the "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).

Here, the trial court found that from the beginning of 2013 until the filing of the petition in July 2015, Respondent "made no effort to visit the children, to ask for visitation with the children, to contact the children or to ask about the children's health or well being." The court also found that, during this time, Respondent "did not send birthday, holiday, Christmas or occasional cards to the children, did not send notes or e-mails to the children, and did not send birthday, Christmas or other gifts to the children."

Both children were less than six years old at the time. The trial court found that Respondent's younger child "has no memory of Respondent" and that his older child's "only salient memory of Respondent" is that Respondent "ignored" the child when Petitioner took the children to the funeral of Respondent's father in 2013. As a result, the trial court found, Respondent's older child "was traumatized by Respondent's rejection in 2013" and "has required therapy and additional parental attention to cope with the feelings of rejection he has, since this time, exhibited."

Importantly, Respondent does not challenge these findings as unsupported by clear and convincing evidence; instead, he asserts that these findings "ignore the fact that Respondent, through his attorneys, had attempted to contact the Petitioner" in 2014 to discuss a custody arrangement and that Respondent sought to modify custody in 2015. This, Respondent argues, shows that he sought to play a role in his children's lives. But his counsel's communications and legal filings do not undermine the trial

court's findings—supported by evidence in the record—that Respondent himself chose not to maintain any parental relationship with his children during this two-and-a-half year period.

To be sure, Respondent contends that, after the parties' divorce hearing in 2012, Petitioner told him "that he would never see his children again." But the trial court did not find that Petitioner prevented Respondent from contacting or visiting his children, and there is no evidence in the record that Petitioner did so. Likewise, although Respondent testified that he did not know how to contact Petitioner, the trial court found this testimony not credible, and clear and convincing evidence in the record, including Respondent's own testimony, supports this finding.

In short, as in many cases in which one parent seeks to terminate the other's parental rights, this case involves highly emotional, disputed testimony about many key issues. But this Court's role on appeal is not to examine these disputed facts anew, but to determine whether the trial court's findings are supported by clear and convincing evidence. *See In re D.H.*, 177 N.C. App. 700, 703, 629 S.E.2d 920, 922 (2006).

The trial court established, through lengthy, detailed findings, that Respondent willfully chose not to have any form of parental relationship with his two children and that his actions were wholly inconsistent with a desire to maintain custody of the children. Those findings are supported by clear and convincing

evidence in the record. Thus, the trial court's findings are sufficient to support its conclusion that Respondent willfully abandoned his children. *See In re C.J.H.*, 240 N.C. App. at 503–04, 772 S.E.2d at 92.

III. Best Interests Determination

Finally, Respondent argues that the trial court erred by determining that termination was in the children's best interests. Notably, Respondent does not argue that the trial court misapprehended the law or failed to make appropriate findings. He instead makes a rhetorical argument that he should remain part of his children's lives "as a caring and loving father, not as some distant and unknown figure who someday his sons will surely want to know."

We sympathize with Respondent's argument and acknowledge that, at the time of the termination hearing, he earnestly sought to be part of his children's lives going forward. But this Court is an error-correcting body and our role in this proceeding is limited to determining if the trial court—the court equipped to assess these difficult, emotional issues—abused its discretion in its best interests determination. *In re A.R.*, 227 N.C. App. 518, 520–21, 742 S.E.2d 629, 631–32 (2013). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 520–21, 742 S.E.2d at 632.

Here, the hearing transcript and the trial court's thorough findings of fact demonstrate that it engaged in a reasoned decision when assessing the children's best interests. Accordingly, we reject Respondent's challenge to the court's best interests determination.

Conclusion

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

AFFIRMED.

Judges TYSON and BERGER concur.

Report per Rule 30(e).