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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-510

Filed: 18 December 2018

Forsyth County, No. 17 JT 19

IN THE MATTER OF: A.K.J.

Appeal by respondent-father from order entered 7 February 2018 by Judge Laurie H. Hutchins in Forsyth County District Court. Heard in the Court of Appeals 29 November 2018.

Kurtz Evans Whitley Guy & Simos, PLLC, by Susan Sullivan Simos, for petitioner-appellee mother.

Assistant Appellate Defender Joyce L. Terres, for respondent-appellant father.

No brief filed for guardian ad litem.

CALABRIA, Judge.

Respondent appeals from an order terminating his parental rights to his minor child, A.K.J. (“April”). We hold the trial court’s findings of fact do not support its conclusion that respondent willfully abandoned April, and reverse the court’s order.

I. Factual and Procedural Background

April’s biological mother (“petitioner”) and father (“respondent”) were living together when April was born in June 2013. Petitioner left respondent two months

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later, taking April with her. Respondent had sporadic contact with petitioner and April during the early part of 2015, but had no contact with them from early 2015 to 18 January 2017, when he sent petitioner a message seeking to work out an arrangement to see April. Petitioner did not respond to the message and instead filed a petition to terminate respondent's parental rights to April on 30 January 2017. Petitioner voluntarily dismissed the petition, because it alleged she was living in the wrong county.

Petitioner filed another petition to terminate respondent's parental rights to April on 9 May 2017, alleging the ground of willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(7) (2017). After a hearing on 8 and 13 December 2017, the trial court entered an order terminating respondent's parental rights to April on 7 February 2018. Respondent filed timely notice of appeal.

II. Findings of Fact

Respondent first argues the trial court erred in terminating his parental rights to April, because the court's findings of fact are inadequate to support its conclusion that he abandoned her. We agree.

A. Standard of Review

This Court reviews orders terminating parental rights to determine "whether the [trial court's] findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law." *In re*

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Clark, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). However, “[t]he trial court’s conclusions of law are fully reviewable *de novo*” *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (citation and quotation marks omitted), *aff’d per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009).

B. Analysis

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).

Abandonment has been defined as wilful neglect and refusal to perform the natural and legal obligations of parental care and support. It has been held that if 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.

In re Humphrey, 156 N.C. App. 533, 540, 577 S.E.2d 421, 427 (2003) (citation omitted). “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 T.C.B.*, 166 N.C. App. 482, 485, 602 S.E.2d 17, 19 (2004) (quoting *In re Adoption of Searle*, 82 N.C. App. 273, 276, 346 S.E.2d 511, 514 (1986)). “[T]he findings [of fact] must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody of the child.” *In re B.S.O.*, 234 N.C. App. 706, 710, 760 S.E.2d 59, 63 (2014) (citation and quotation marks omitted).

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In the instant case, the trial court made only three findings of fact in support of its conclusion that respondent's parental rights could be terminated on the ground of willful abandonment:

8. Respondent, [] the juvenile's biological father has had no contact with the juvenile since in or about March 2015, despite his **four** requests to the Petitioner to see the child, from June 2015 through October, 2017.

9. The Court finds that Respondent had no contact with the juvenile for six months prior to this hearing, and in fact has had no contact for approximately two years and eight months prior to this hearing.

10. The Court finds, pursuant to N.C. Gen. Stat. § 7B-1111(7) [sic] that the Respondent has willfully abandoned the minor child for at least six consecutive months immediately preceding the filing of the petition.

(Emphasis in original.) Of these three findings of fact, findings 8 and 9 are evidentiary findings of fact, and finding 10 is an ultimate finding of fact. *See In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) ("Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts" (citation and quotation marks omitted)). These findings do not support the trial court's conclusion that respondent's parental rights could be terminated based upon the ground of willful abandonment.

The ground of willful abandonment is based on an evaluation of a parent's conduct in the "six consecutive months immediately preceding the filing of the petition[.]" N.C. Gen. Stat. § 7B-1111(a)(7). Here, the petition was filed on 9 May

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2017, and so the relevant six-month period is from 9 November 2016 to 9 May 2017. Both findings of fact 8 and 9 include substantial periods of conduct outside of the relevant six-months prior to the filing of the petition to terminate respondent's parental rights. Respondent's contact with April, or lack thereof, during the periods of time beyond the six-month window is relevant only to the evaluation of his credibility and intentions. *See In re C.J.H.*, 240 N.C. App. 489, 503, 772 S.E.2d 82, 91 (2015) ("the trial court may consider [a] respondent's conduct outside [the six-month] window in evaluating [the] respondent's credibility and intentions").

The trial court's findings, however, consist of only bare statements of fact that respondent had no contact with April, despite his multiple requests to see her, from March 2015 through December 2017. The portions of findings of fact 8 and 9 which fall outside of the relevant six-month window do not address respondent's credibility or intentions and are thus immaterial to the question of whether respondent's parental rights could be terminated on the ground of willful abandonment.

Findings of fact 8 and 9 also encompass the relevant six-month period and those portions of the findings are supported by evidence before the trial court. Testimony from respondent and petitioner established that respondent had last seen April in March 2015, had contacted petitioner about seeing April in May 2015, sometime around Christmas of 2015, on 18 January 2017, and in June 2017. Thus, during the relevant six-month period, respondent had no contact with April, but did

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make one request to see her on 18 January 2017, which led petitioner to file the petition to terminate his parental rights. Ultimately, the trial court's findings establish only that although respondent repeatedly asked petitioner to see April, he had no contact with April in the two years prior to the filing of the petition.

We hold the trial court's evidentiary findings of fact are insufficient to support its ultimate finding that respondent's lack of contact with April was *willful* such that it constituted abandonment of April. The court's findings only show a lack of contact and not that respondent's actions constituted willful neglect and refusal to perform the natural and legal obligations of parental care and support. *See Searle*, 82 N.C. App. at 275, 346 S.E.2d at 514 ("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"). Accordingly, we hold the trial court erred in concluding that grounds existed to terminate respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). Because the trial court found only this single ground to terminate respondent's parental rights to April, we reverse the trial court's order.¹

REVERSED.

Judges TYSON and ZACHARY concur.

¹ Respondent also argued that the trial court erred in failing to make any findings regarding his payment of child support during the relevant-six month period. However, because the findings made by the court are insufficient to support its conclusion of law, we need not address this argument.

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Report per Rule 30(e).