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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-524

Filed 21 November 2023

Gaston County, Nos. 18JT173–174

IN THE MATTER OF:

L.D.C. & K.J.C.

Appeal by respondent-father from termination of parental rights order entered by Judge Craig R. Collins in Gaston County District Court. Heard in the Court of Appeals 1 November 2023.

*BJK Legal, by Benjamin J. Kull, for respondent-appellant father.*

*Curcio Anderson Law, PLLC, by Lindsey Curcio, for petitioner-appellee mother.*

FLOOD, Judge.

Appeal by Landon Dewayne Cecil (“Respondent-Father”) from the trial court’s order terminating his parental rights in his children. For the reasons set forth below, we reverse and remand.

**I. Factual and Procedural Background**

Respondent-Father and Petitioner-Mother (collectively, the “Parents”) were married at the time of each of their children’s births—Louie was born on 25 February

2011, and Karla on 7 June 2012.<sup>1</sup> In April 2014, at which time the Parents were living with Louie and Karla (collectively, the “children”) in Alabama, Petitioner-Mother left Respondent-Father and brought their children to North Carolina. The Parents thereafter, in 2017, entered court-ordered agreements regarding custody, visitation, and child support in North Carolina. Respondent-Father currently lives in Indiana and has never lived in North Carolina.

At some point in 2018, Petitioner-Mother filed the first of two termination of parental rights petitions. On 15 February 2019, the trial court dismissed this petition. On 5 October 2021, Petitioner-Mother filed a second termination petition, which came on before the trial court on 9 January 2023. The termination hearing was not bifurcated into separate adjudication and disposition phases, and the trial court accepted two pieces of documentary evidence at the hearing: (1) a 2017 visitation order from the Parents’ initial custody case, and (2) Respondent-Father’s 19 January 2022 Motion for Order to Show Cause from the custody case, where he alleged Petitioner-Mother had “impeded or denied visitation or communication” between him and the children.

The trial court heard the testimony of five witnesses at the hearing. First, Petitioner-Mother testified about the lack of contact between the children and Respondent-Father, and provided that she maintained the same phone number and

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<sup>1</sup> Pseudonyms are used to protect the identities of the minor children. See N.C.R. App. P. 42(b).

never blocked Respondent-Father's phone number. Petitioner-Mother also testified that, only after the second petition was filed did Respondent-Father ask for basic information about the children. Regarding the children, Petitioner-Mother testified that "they're just happy," and they look to her new husband, Tyler Lane ("Mr. Lane"), as their "father figure."

Second, Mr. Lane testified that the children "live in [his] house[.]" he is their "father figure[.]" and "[i]f the legal opportunity arises, [it is his] intention to adopt these children sometime in the future[.]"

Third, the Guardian *ad litem* ("GAL") for the children testified as to the content of his written report and recommended that Petitioner-Mother's second petition for termination of parental rights be allowed. In support of his recommendation, the GAL provided that Respondent-Father had no contact with the children for a five-year period.

Fourth, the children's paternal grandmother, Debra Flamion, testified that she had regular contact with the children during this five-year period as well as regular contact with Respondent-Father, but Respondent-Father did not have regular contact with the children.

Fifth, and lastly, Respondent-Father testified that he had lost Petitioner-Mother's phone number when he had to replace his phone. He did, however, admit to texting Petitioner-Mother on 2 November 2021 at the same phone number she always used. Respondent-Father further testified he never tried to contact the

children and did not seek to enforce the 2017 custody order until 2022, which he did only after being served with the second petition to terminate his parental rights.

In closing statements, Respondent-Father's counsel argued lack of willfulness as to Respondent-Father's abandonment of the children. The trial court orally announced its decision to terminate Respondent-Father's parental rights for abandonment of the children and entered its formal written order the following month. As part of its oral findings, the trial court provided "that these children are in a stable, happy, loving environment with a solid father figure who has been consistent for them." At no point during the termination hearing, nor in its written order, did the trial court identify the evidentiary standard it applied to its findings of fact. On 23 March 2023, Respondent-Father provided written notice of appeal.

## **II. Jurisdiction**

Respondent-Father's appeal is properly before this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(2), 7B-1001(a)(7), and 7B-1002(4). *See* N.C. Gen. Stat. §§ 7A-27(b)(2), 7B-1001(a)(7), 7B-1002(4) (2021).

## **III. Standard of Review**

In reviewing the adjudicatory stage of a termination of parental rights proceeding, this Court must "determine whether the findings are supported by clear, cogent, and convincing evidence and [whether] the findings support the conclusions of law." *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020) (citation and internal quotation marks omitted).

**IV. Analysis**

Respondent-Father argues on appeal the termination order must be reversed because: (A) the trial court failed to apply the proper evidentiary standard; and (B) the trial court failed to comply with the statutory mandate to “consider” the likelihood of adoption when choosing, as a matter of discretion, to terminate his parental rights.

Petitioner-Mother concedes that Respondent-Father correctly argues the trial court failed to apply the correct evidentiary standard in terminating his parental rights, and this Court must vacate and remand the termination order. Respondent-Father, however, further contends that, on remand, this Court should provide specific instructions that the trial court address the “willfulness” element of N.C. Gen. Stat. § 7B-1111(a)(7), as the trial court did not previously do so.

As to the standard of evidence, this Court has provided that a trial court commits reversible error where “the trial court failed to announce, either in open court or in [its] written [o]rders terminating . . . parental rights, it was making [f]indings using the required clear, cogent, and convincing standard of proof.” *In re A.H.D.*, 287 N.C. App. 548, 565, 883 S.E.2d 492, 505 (2023). If a party presented such evidence on which the trial court could have terminated parental rights, however, “we remand the case rather than reverse it outright” and may include specific instructions for the trial court. *Id.* at 564–65, 883 S.E.2d at 504–05.

Here, the trial court stated in neither its oral announcement nor written termination of Respondent-Father’s parental rights that it made its findings under

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the clear, cogent, and convincing standard of evidence. *See id.* at 565, 883 S.E.2d at 505. We vacate and remand, rather than reverse, the trial court’s order as there was sufficient testimonial evidence that supported termination of Respondent-Father’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(7). *See id.* at 564–65, 883 S.E.2d at 504–05. As set forth above, Respondent-Father requests that, on remand, we instruct the trial court to address the willfulness element of N.C. Gen. Stat. § 7B-1111(a)(7).

As to willfulness, our Supreme Court has provided:

Willful intent is a necessary component of abandonment, and, when adjudicating willful abandonment as a ground for termination under N.C. [Gen. Stat.] § 7B-1111(a)(7), the trial court must make adequate evidentiary findings to support its ultimate finding as to whether willful intent exists.

*In re K.C.T.*, 375 N.C. 592, 601, 850 S.E.2d 330, 337 (2020) (citation omitted). In determining whether there was willful intent, the trial court must consider whether the parent had “the ability” to make or maintain contact with the children. *See In re K.N.K.*, 374 N.C. 50, 54–55, 839 S.E.2d 735, 738–39 (2020).

Here, the trial court made no findings as to the willfulness of Respondent-Father’s abandonment of the children. Accordingly, we vacate and remand the trial court’s order terminating Respondent-Father’s parental rights, with specific instructions that the trial court, in its new written order, address the willfulness element of N.C. Gen. Stat. § 7B-1111(a)(7). *See In re K.C.T.*, 375 N.C. at 601, 850

S.E.2d at 337; *see also In re A.H.D.*, 287 N.C. App. at 564–65, 883 S.E.2d at 504–05. In addressing willfulness, the trial court may, in its discretion, receive new evidence, but is not required to do so. *See In re K.C.T.*, 375 N.C. at 601, 850 S.E.2d at 337.

As we vacate and remand the trial court’s order for its failure to apply the proper evidentiary standard, we decline to address Respondent-Father’s argument regarding the trial court’s failure to consider the likelihood of adoption.

**V. Conclusion**

For the foregoing reasons, we vacate and remand the order terminating Respondent-Father’s parental rights so the trial court may reconsider the evidence and make further findings of fact as to the willfulness element of N.C. Gen. Stat. § 7B-1111(a)(7).

VACATED AND REMANDED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).