IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-828

Filed 19 March 2024

Rowan County, No. 23 JT 3

IN RE: S.D.Z.

Appeal by respondent from order entered 14 June 2023 by Judge James F. Randolph in Rowan County District Court. Heard in the Court of Appeals 20 February 2024.

Wofford Burt, PLLC, by Rebecca B. Wofford and J. Huntington Wofford, for petitioner-appellee-father.

Kimberly Connor Benton for respondent-appellant-mother.

No brief filed for Guardian ad Litem.

ZACHARY, Judge.

Respondent-Mother appeals from the trial court's order granting Petitioner-Father's petition to terminate her parental rights to the parties' minor child, Seth.[1] After careful review, we affirm.

BACKGROUND

[1] To protect the minor child's identity, we refer to the minor child by the pseudonym adopted by the parties.

Father is the biological father of Seth, born in November 2020. Father and Mother separated in June 2021, roughly six months after Seth's birth. On 3 November 2021, the trial court entered an order granting Father custody of Seth and granting Mother visitation every other weekend. Mother also has an older son, of whom the child's maternal grandmother has sole legal custody.

Mother last attended her scheduled weekend visits with Seth on 27 December 2021, when he was one year old. On 7 January 2022, Mother sent Father a message stating: "I will not be getting [Seth] anymore. I am walking away. I feel [Seth] don't know m[e] anymore and it's what's best for [him]." In spite of this message, "[f]or the next six months[,]" Father and Seth "showed up at the designated exchange time for [Mother's] visitation[;] however, [Mother] never appeared."

After not seeing Seth or contacting Father concerning Seth for nearly one year, on 29 December 2022, Mother sent a message to Father stating: "This is my scheduled weekend to get [Seth]. I will be at Sheetz tomorrow evening at 6:00 pm." Mother texted Father the next day describing the vehicle that she would be driving. Father did not respond, and on 9 January 2023, he filed a petition to terminate Mother's parental rights.

Father alleged that grounds existed to terminate Mother's parental rights due to Mother having "abandoned the minor child pursuant to G.S. 7B-1111(a)(7)[.]" Father asserted that "one text message in a thirteen[-]month period does not constitute any meaningful attempt to be in the life of the minor child nor does it

negate [Mother's] abandonment of the child. [Mother] is a total stranger to the child at this time."

On 10 February 2023, Father filed a motion requesting leave to serve Mother by publication in that her "whereabouts . . . are unknown[.]" On 16 February 2023, the trial court entered an order granting Father's motion. On 13 April 2023, Mother filed an answer.

The trial court appointed a guardian ad litem, who filed a report with the court on 1 June 2023, the day that Father's petition came on for hearing. Through her investigation, the guardian ad litem discovered that Mother "ma[d]e time to call and visit with her incarcerated boyfriend throughout the entire year that she did not call, text, or send cards or gifts to either one of her children." The trial court found that Mother's boyfriend during that time was "a gang member with numerous violent criminal charges" and that Mother "made over 500 phone calls to [him] in jail during this period but had no contact with her own child."

On 14 June 2023, the trial court entered an order terminating Mother's parental rights to Seth on the ground of willful abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). The trial court found as fact that for the six months immediately preceding Father's filing of the termination petition, Mother "failed to make any attempts to see [Seth], communicate with [him], or have a relationship with [him]." The trial court also determined that it was "in the best interests of [Seth] for the parental rights of [Mother] to be terminated[.]"

Mother filed timely written notice of appeal.

DISCUSSION

Mother argues that the trial court erred in concluding that grounds existed to terminate her parental rights because "there was insufficient evidence to support the conclusion" that she willfully abandoned Seth. Mother also challenges the trial court's determination that termination of Mother's parental rights was in Seth's best interests.

Standard of Review

We review a trial court's order terminating parental rights "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citation omitted). "Findings of fact supported by competent evidence are binding on appeal, despite evidence in the record that may support a contrary finding." *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020). "[C]onclusions of law are reviewable de novo on appeal." *C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695.

"The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion." *In re C.B.*, 375 N.C. 556, 560, 850 S.E.2d 324, 327 (2020) (citation omitted). A trial court abuses its discretion only if its "ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *See id.* at 560, 850 S.E.2d at 327–28 (citation omitted). "We review the trial court's dispositional findings of fact to determine

whether they are supported by competent evidence." *Id.* at 560, 850 S.E.2d at 328 (citation omitted).

Willful Abandonment

N.C. Gen. Stat. § 7B-1111 provides the grounds pursuant to which a court may terminate parental rights to a minor child. N.C. Gen. Stat. § 7B-1111(a)(1)–(11) (2023). "[T]he petitioner bears the burden of proving by clear, cogent, and convincing evidence the existence of one or more grounds . . . ." *C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 694 (cleaned up).

One of the grounds for termination of parental rights is the parent's willful abandonment of the child. N.C. Gen. Stat. § 7B-1111(a)(7). Subsection (a)(7) allows for the termination of parental rights where the "parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion[.]" *Id.* "Abandonment implies conduct on the part of the parent which manifests a willful determination" to forgo all parental obligations "and relinquish all parental claims to the child." *C.B.C.*, 373 N.C. at 19, 832 S.E.2d at 695 (citation omitted). "If a parent withholds [her] presence, love, care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child." *Id.* (cleaned up). "To establish willful abandonment, the trial court must find evidence . . . that the parent deliberately eschewed his or her parental responsibilities in their entirety." *In re E.B.*, 375 N.C. 310, 318, 847 S.E.2d 666, 673 (2020).

"[T]he question of willful intent is a factual one for the trial court to decide based on the evidence presented, and . . . the trial court's factual determination is owed deference . . . ." *In re B.R.L.*, 379 N.C. 15, 18, 863 S.E.2d 763, 767 (2021) (citation omitted). "[T]he trial court may consider a parent's conduct outside the six-month window in evaluating [her] credibility and intentions," but "the determinative period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition." *Id.* (cleaned up).

Here, Father filed the petition to terminate Mother's parental rights on 9 January 2023. The evidence at trial showed that during the six months prior to the filing of the petition, Mother had not seen Seth; in fact, she had not seen him since 27 December 2021, over a year prior to the filing of the petition. Mother does not challenge the following findings by the trial court, which she concedes "fairly represent the evidence presented at trial."

> [a.] Specifically, [Mother] has not seen the child since December 27, 2021. On January 7, 2022, [Father] received a text message purportedly from [Mother] saying "[Father] this is [Mother]. I will not be getting [Seth] anymore. I am walking away. I feel [Seth] don't know m[e] anymore and it's what's best for [Seth]. So you got what you wanted." [Mother] testified that she did not recall sending this message. Thereafter [Mother] made no efforts to see [Seth] or contact [Seth] in any form or fashion nor did she make any contact with [Father.] For the next six months after December 27, 2021, [Father] showed up at the designated exchange time for [Mother]'s visitation, however, she never appeared. The first attempt made by [Mother] to be involved in the life of [Seth] was a text message sent by [Mother] to [Father] on or about December 29, 2022, (after

> she had been absent from [Seth] for approximately one year), saying "This is my scheduled weekend to get [Seth]. I will be at Sheetz tomorrow evening at 6:00pm." She sent a second text the following day advising [Father] what kind of car she would be in. . . .
>
> b. [Mother] testified that she made a decision in January, 2022 to "step back" from [Seth].

Nor does Mother challenge the trial court's finding that while she did not contact Seth or Father, she "was in a relationship with Matthew West, a gang member with numerous violent criminal charges, and made over 500 phone calls to Mr. West in jail during this period but had no contact with her own child." *See D.W.P.*, 373 N.C. at 330, 838 S.E.2d at 400 ("Unchallenged findings of fact . . . are binding on appeal.").

However, Mother challenges the last portion of the trial court's finding of fact 5a, in which the court "specifically [found] that [Mother's two text messages to Father] do not show a meaningful attempt to be a parent to the minor child taking it into the context that this is the first and only communication she had with [Father] regarding the child in the span of one year." Mother contends that she did not make "an intentional decision . . . to withhold her love, presence, and care for Seth"; rather, she "was involved with the wrong crowd so took a step back from visiting with Seth." In sum, Mother asserts that the evidence does not support a finding that her conduct was willful.

As our Supreme Court has explained, "[t]he willfulness of a parent's actions is

a question of fact for the trial court." *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020) (citing *Stancill v. Stancill*, 241 N.C. App. 529, 531, 773 S.E.2d 890, 892 (2015), for the rule that "[w]here the trial court sits as the finder of fact, and where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial court"). " 'Intent' and 'wilfullness' are mental emotions and attitudes and are seldom capable of direct proof; they must ordinarily be proven by circumstances from which they may be inferred . . . ." *Id.* (cleaned up).

In the present case, although the trial court found that Mother "testified that she did not recall sending [the] message" to Father that she was "walking away" from Seth, Mother admitted at trial that "she made a decision in January, 2022 to 'step back' from" Seth. The guardian ad litem reported that Mother "did not contact [Father] to offer anything or to check on [Seth's] well-being from the time she voluntarily absented herself until her first text on December 29, 2022."

Father testified that during the period beginning at Mother's last visit with Seth on 27 December 2021 until her text to Father on 29 December 2022, Mother did not contact him about Seth, appear for visitation, or "send any cards, letters, or gifts to" Seth. *See C.B.C.*, 373 N.C. at 23, 832 S.E.2d at 697 (affirming termination where, during the relevant six-month period, the respondent "did not send any cards or letters to [the minor child], did not contact [the] petitioners to inquire into [her] well-being, . . . and did not provide financial support"). Additionally, the guardian ad litem

reported that the "current court Order in effect for" Mother's older son—who Mother testified she has not seen since "January of '22"—provides that Mother have "no visitation until she appears before the court."

The law on this issue is clear: A single act by the parent within the determinative period is generally insufficient to overcome a trial court's finding of willful abandonment. *See, e.g.*, *In re J.D.C.H.*, 375 N.C. 335, 344, 847 S.E.2d 868, 876 (2020) ("The trial court's findings of fact demonstrate that except for respondent's one unsuccessful phone call requesting to see the children, he made no other attempt to contact petitioner or to reestablish a relationship with the children during the six-month determinative period or for nearly two years preceding that period."); *In re B.S.O.*, 234 N.C. App. 706, 713, 760 S.E.2d 59, 65 (2014) ("In light of respondent-father's single phone call to respondent-mother and his children during the six months immediately preceding [filing of the termination petition], the district court did not err in finding that he willfully abandoned the children.").

Here, the evidence and the trial court's findings evince Mother's complete lack of involvement with Seth, not only during the determinative six-month period, but dating back to 2021. These facts support the court's ultimate findings that Mother willfully abandoned Seth. Mother's "actions both prior to and during the determinative six-month period support a reasonable inference of willfulness for purposes of [N.C. Gen. Stat.] § 7B-1111(a)(7)." *K.N.K.*, 374 N.C. at 55, 839 S.E.2d at 739. Thus, the trial court did not err when it concluded that grounds existed to

terminate Mother's parental rights to Seth pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). *Id.*

Best Interest Determination

"If during the adjudicatory stage, the trial court finds grounds to terminate parental rights under N.C.G.S. § 7B-1111(a), it proceeds to the dispositional stage where it must determine whether terminating the parent's rights is in the juvenile's best interest." *C.B.*, 375 N.C. at 559, 850 S.E.2d at 327 (citation omitted). N.C. Gen. Stat. § 7B-1110(a) sets forth several criteria for "determining whether termination of parental rights is in the best interests of the juvenile[.]" *Id.* The trial court must make written findings regarding any of the following criteria that are relevant:

> (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)(1)–(6).

"The court may consider any evidence, including hearsay evidence . . . , that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile." *Id.* § 7B-1110(a).

Here, the trial court placed great emphasis on Seth's bond with Father's fiancée:

> 7. It is in the best interests of the minor child for the parental rights of [Mother] to be terminated in that [Father] is engaged to be married. [Father's] fiancée . . . has been in the life of [Seth] for in excess of one year and [Seth] looks at her as his mother. She has a close and loving relationship with [Seth] and has acted in all respects as the "mother" to [Seth]. [Seth] refers to [her] as "mom". Termination of [Mother's] parental rights will allow the adoption of [Seth] by [Father's fiancée].

Mother challenges the last sentence of the trial court's finding, which states that termination of Mother's parental rights "will allow the adoption of [Seth] by" Father's fiancée, as unsupported by the evidence. Mother contends that Father "is not married [yet and] there was no evidence they even have a wedding date planned[,]" so the fiancée "would not be eligible to adopt him for at least six months after she married [Father]." Mother further maintains that the trial court "did not perform a reasoned analysis in weighing" the relevant factors under N.C. Gen. Stat. § 7B-1110(a). Therefore, Mother argues that the court abused its discretion in determining that it was in Seth's best interests to terminate her parental rights.

Mother's argument that Father is merely engaged and thus Father's fiancée cannot yet adopt Seth is inapt. The trial court stated in its order that Father was

"engaged to be married[,]" indicating that the court appreciated that the fiancée could not adopt Seth immediately upon termination of Mother's parental rights. It is clear upon review of the sentence in context that the trial court envisioned Seth's *eventual* adoption by fiancée. Accordingly, competent evidence supports the challenged portion of this finding. *See C.B.*, 375 N.C. at 560, 850 S.E.2d at 328.

Moreover, the challenged finding is not dispositive of the trial court's best interest determination. The court also concluded that termination of Mother's parental rights was in Seth's best interests on the basis of Seth's relationship with Father's fiancée and the strong bond that they share, noting that Seth refers to her as "mom" and that she "has acted in all respects as the 'mother' " to Seth. *See* N.C. Gen. Stat. § 7B-1110(a)(1)–(6).

These findings adequately reflect the trial court's reasoned consideration of "the relevant statutory criteria[.]" *C.B.*, 375 N.C. at 564, 850 S.E.2d at 330. "To the extent [Mother] is asking this Court to reweigh the record evidence and to substitute our weighing of the relevant statutory criteria for that of the trial court, we decline to do so . . . ." *Id.* "[S]uch an approach would be inconsistent with the applicable standard of review, which focuses upon whether the trial court's dispositional decision constitutes an abuse of discretion[.]" *Id.* (citation omitted).

In light of the above findings, which the evidence amply supports, we conclude that the trial court's best interests determination was not so arbitrary that it could not have been the result of a reasoned decision. *Id.* at 560, 850 S.E.2d at 328. Thus,

Mother has failed to show that the trial court abused its discretion when it determined that termination of Mother's parental rights was in Seth's best interests.

CONCLUSION

For the reasons stated herein, we conclude that the evidence supports the trial court's findings of fact, which in turn support the court's determination that grounds existed to terminate Mother's parental rights to Seth. We further conclude that the trial court did not abuse its discretion in determining that the termination of Mother's parental rights was in Seth's best interests. Accordingly, we affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Judges GORE and GRIFFIN concur.

Report per Rule 30(e).