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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1116

Filed: 5 July 2017

Wilkes County, No. 12 JT 60

IN THE MATTER OF: P.L.B.

Appeal by respondent-father from order entered 5 August 2016 by Judge David V. Byrd in Wilkes County District Court. Heard in the Court of Appeals 25 May 2017.

Erika Leigh Hamby for petitioner-appellee Wilkes County Department of Social Services.

Gillette Law Firm PLLC, by Jeffrey William Gillette, for respondent-appellant father.

Penry Riemann PLLC, by Neil A. Riemann, for guardian ad litem.

DIETZ, Judge.

Respondent appeals from an order terminating his parental rights to his son Phillip.¹ As explained below, the trial court's findings support its conclusion that Respondent willfully abandoned Phillip under N.C. Gen. Stat. § 7B-1111(a)(7). Those findings, in turn, are supported by clear, cogent, and convincing evidence in the

¹ We use a pseudonym to protect the child's identity.

record. We therefore affirm the trial court on this basis and we need not address the alternative grounds for termination on which the trial court relied.

Facts and Procedural History

On 27 April 2012, the Wilkes County Department of Social Services filed juvenile petitions alleging that Phillip was a neglected juvenile. When DSS filed the petition, Phillip was living with his maternal grandmother after previously living with his mother and stepfather. On 17 July 2012, the trial court entered an order concluding that Phillip was a neglected juvenile.

Respondent entered into a case plan with DSS that required him to sign a voluntary support agreement for Phillip, refrain from using illegal drugs, participate in Phillip's therapy if requested by the therapist, attend visitations with Phillip, stay in weekly contact with DSS, and refrain from any illegal activity. Although Respondent visited Phillip, he did not stay in weekly contact with DSS. He also did not provide any support for Phillip.

In the July 2013 permanency planning hearing, the trial court noted that Respondent was making visits and phone calls with Phillip. However, by January 2015, the trial court observed, "none of the parents has done anything to strengthen or maintain the parents' relationship with his/her child(ren). Specifically [Respondent] has had no contact with either the child or Social Worker since the last review."

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At the July 2015 permanency planning hearing, the court found that “[t]he children have been abandoned by their parents.” And as a result, “[t]he children do not wish to visit with their parents.” The court then entered an order asking the parents to seek judicial approval before visitation. On 26 October 2015, Respondent attended a juvenile court delinquency hearing for Phillip. The DSS social worker testified that Respondent had no DSS-sponsored visits with Phillip and no contact with DSS.

On 13 January 2016, DSS filed a petition to terminate Respondent’s parental rights to Phillip on the grounds of neglect, failure to make reasonable progress, failure to pay a reasonable portion of the costs of Phillip’s care, and abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(3), (7). After DSS filed the petition, Respondent made a one-time support payment of \$1,600, but this amount was still insufficient to cover his arrearage. On 5 August 2016, following a hearing, the trial court entered an order terminating Respondent’s parental rights on each of the four grounds alleged by DSS. Respondent timely appealed.

Analysis

Respondent argues that the trial court erred by terminating his parental rights on each of the four grounds. As explained below, the trial court’s termination based on willful abandonment is supported by its findings, which in turn are supported by the record. We therefore affirm the trial court’s order on this basis.

“The standard for review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984). A sufficient finding of any one of the four grounds for termination is sufficient for termination of parental rights. *See In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003).

Under N.C. Gen. Stat. § 7B-1111(a)(7), the trial court may terminate parental rights where “[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion.” “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.” *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986). Factors to be considered include a parent’s financial support for the child and “emotional contributions,” such as “respondent’s 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, DSS filed the petition to terminate Respondent’s parental rights on 13 January 2016. Thus, the relevant time period is 13 July 2015 to 13 January 2016. The trial court found that, during this period, Respondent never visited Phillip despite the opportunity to do so, and never inquired about Phillip’s well-being:

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23. From July 13, 2015 until January 13, 2016, the Court finds with regard to all of the children's parents, the following:

- A. No parent has visited with his/her child(ren).
- B. All the parents had opportunities to visit with their children during the time in question.
- C. Neither parent showed any interest in the well-being or welfare of his/her child(ren).
- D. Neither parent maintained regular contact with the Social Worker nor made inquiry concerning a child's welfare.

....

- G. . . . [Respondent] has not visited with his son in two (2) years.

Respondent argues that his failure to contact Phillip was not willful because the trial court ordered him not to communicate with his son. The record does not support this argument. To be sure, in an earlier proceeding, the trial court order prohibited any visitation "unless and until a parent desiring a visit obtains permission . . . from a Court of competent jurisdiction after proper motion." But the record also demonstrates that Respondent was aware of the steps necessary to seek visitation; he never took those steps. Thus, we reject his argument that his failure to visit Phillip was not willful.

Respondent next argues that he messaged his son on social media during a three-day period in April and saw Phillip at a juvenile court proceeding on 26 October

2015. Respondent argues that the trial court failed to consider these contacts in its findings concerning abandonment. We disagree.

As an initial matter, a finding of willful abandonment is not rendered infirm simply because the parent had some minimal contact with the child. *See In re C.J.H.*, 240 N.C. App. 489, 504, 772 S.E.2d 82, 92 (2015) (affirming termination based on willful abandonment although the father had sporadic contact with the child). Moreover, Respondent's contacts with his son do not affect the court's findings. The court found that, despite some fleeting messages on social media and an encounter at a juvenile court proceeding, Respondent never sought to visit his son for more than two years and never expressed any interest in his well-being. These findings are supported by clear, cogent, and convincing evidence in the record.

In light of these findings, the trial court properly terminated Respondent's parental rights for willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7). Because we hold that termination on this ground was proper, we need not consider Respondent's arguments concerning the alternative grounds for termination. *See C.J.H.*, 240 N.C. App. at 504, 772 S.E.2d at 92.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges CALABRIA and INMAN concur.

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Report per Rule 30(e).