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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1164

Filed: 17 April 2018

Mecklenburg County, No. 16 JT 456

IN THE MATTER OF: C.A.B.

Appeal by Respondent-Mother from order entered 21 July 2017 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 22 March 2018.

Epperson Law PLLC, by James L. Epperson, for petitioner-appellee stepmother.

Ewing Law Firm, PC, by Robert W. Ewing, for respondent-appellant mother.

No brief filed on behalf of guardian ad litem.

HUNTER, JR., Robert N., Judge.

Respondent appeals from an order terminating her parental rights to her minor child, C.A.B. ("Cathy").[1] On appeal, Respondent argues the trial court's order

[1] We use the pseudonym "Cathy" throughout this opinion for ease of reading and to protect the juvenile's privacy. N.C. R. App. P. 3.1 (2017). Additionally, we adopt the pseudonym used by the parties in their briefs for Cathy's father.

lacks sufficient findings to conclude she willfully abandoned Cathy, and, thus, no grounds existed to terminate her parental rights. We agree, vacate the court's order, and remand for further findings.

I. Factual and Procedural Background

Respondent and Cathy's father ("Chris") met in Florida in 2007.[2] At the time of Cathy's birth in June 2009, Respondent and Chris lived together in Chris's home in Charlotte, North Carolina. In December 2009, Immigration and Customs Enforcement ("ICE") officers "picked up" Respondent from Chris's home. Since then, Cathy resided with Chris at his home.

Sometime in 2010,[3] Chris filed a complaint for child custody and child support. On 16 December 2010, the Mecklenburg County District Court held a hearing. Chris appeared and testified on his behalf, but Respondent did not make an appearance. Nonetheless, in June 2011,[4] the court entered a permanent custody order, awarding full custody of Cathy to Chris. In its order, the court found Respondent's "current whereabouts and financial circumstances are unknown to [Chris] and the Court[.]"

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[2] The parties did not present evidence regarding the relationship between Chris and Respondent from 2007 to 2009. Thus, the record does not indicate when Respondent moved to North Carolina or when they moved in together.

[3] The record fails to show when Chris filed a complaint for child custody and child support. Additionally, the record does not indicate how, or if, Chris served Respondent with notice of this hearing.

[4] The court signed the order on 6 January 2011. However, there is no file date on the order. At the hearing, Chris testified he obtained full custody in 2009.

The court decreed "[Respondent] shall have no further contact with the parties' minor child pending further orders of this Court." The court dismissed Chris's claims for child support, "subject to [Chris's] right to reinstate those claims at a later date[.]"

On 29 July 2013, Chris obtained a domestic violence protective order against Respondent, effective for one year.[5] On 18 June 2014, Chris renewed the protective order, effective until 18 June 2016. Under the order, Respondent could not contact Cathy.

Chris and Cathy's step-mother ("Petitioner") married on 13 September 2015. On or about 15 March 2016, Chris executed a Consent to Adoption, consenting to Petitioner's adoption of Cathy. Sometime in April,[6] Petitioner filed a petition for adoption of Cathy.[7] Petitioner published notice of the pending adoption from 22 April 2016 to 6 May 2016. The publication set a 1 June 2016 deadline for Respondent's response. Respondent filed a handwritten objection on 22 July 2016. In her objection, Respondent asserted Chris obtained a restraining order against her for two years, and, thus, she could not "make contact with [her] daughter[, Cathy]." Respondent also alleged Chris "made it impossible" for any members of Respondent's family to

[5] The domestic violence protective order and continuances are not included in the record.

[6] Petitioner's petition to terminate parental rights does not state the date she filed the petition for adoption. Instead, Petitioner states service by publication began on 22 April 2016.

[7] The petition for adoption is not included in the record or as an exhibit to the petition for termination of parental rights.

have contact with Cathy. The record does not indicate the disposition, if any, of the petition for adoption.

On 22 September 2016, Petitioner filed a petition to terminate Respondent's parental rights to Cathy. Petitioner contended grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (4), (7)[8] and alleged:

> (a) That Respondent/Biological mother has a significant history of violence and abused and neglected the minor child.
>
> (b) That the Respondent/Biological Mother has not provided any financial support or any consistent care or contact with respect to the juvenile and father.
>
> (c) The Respondent/Biological Mother has abandoned the minor child for in excess of more than six (6) months immediately preceding the filing of this Petition. In fact, it has been six years since she has had any contact with the minor child.

On 29 September 2016, a private process server in Florida executed personal service of the petition on Respondent. On 28 October 2016, Respondent filed an answer to the petition. In her answer, Respondent denied the allegations of the petition and requested the court dismiss the petition to terminate her parental rights. On 21 March 2017, the court held a hearing on the petition to terminate Respondent's parental rights.

[8] The petition listed N.C. Gen. Stat. § 7B-1111(a)(1), (6), and (7) as the statutory grounds for termination. At the hearing, the parties and the court discussed the variance between the grounds listed in the petition and the evidence presented at trial.

Petitioner first called Chris. Cathy has lived with Chris since 2009. Respondent last saw Cathy on 25 December 2012. That night, Respondent "came knocking on the door, immediately came in, went straight into the playroom, took [Cathy], pinned her on the floor and ripped out her earrings." Chris told Respondent to leave his home, but did not pursue a restraining order against her at that time.

Since the Christmas 2012 incident, Chris obtained two restraining orders against Respondent. Chris described Respondent's behavior as "harassing." The multiple orders prohibited Respondent from contacting Cathy from 2013 to 2016. Respondent did not visit or see Cathy since 2012 and failed to provide any financial assistance for her.

Petitioner next called Respondent. Respondent agreed she had not seen Cathy since 25 December 2012. However, she denied running into Chris's home and ripping out Cathy's earrings. When asked why she failed to petition the court for visitation, Respondent responded, "How could I?" Respondent explained the restraining orders against her prevented her from seeing Cathy. Respondent also alleged each time she tried to contact Cathy, Chris either prevented her or would "call the coppers" on her. After being detained by ICE, Chris would threaten to "sen[d her] back[.]" Since 2012, Respondent lived in Florida, often staying with her sister.

In June 2016, near Cathy's birthday, Respondent desired to make contact with Cathy. Through an Internet search, Respondent discovered Petitioner's pending

adoption proceeding. After discovering the pending adoption proceeding, Respondent called the Office of the Clerk of Court for Mecklenburg County several times. Respondent met with an attorney and then filed an objection to the adoption on 22 July 2016.

In September 2016, Respondent attended a hearing in Charlotte for Petitioner's adoption petition. Respondent attended because she objected to the court terminating her parental rights[9] and "wanted to see [her] daughter more than anything else after not seeing her for such a long time."

Petitioner rested her case, and Respondent moved to dismiss all the grounds for termination. The trial court dismissed the ground of failure to provide financial support.[10]

Respondent again testified, this time on her own behalf. Respondent failed to contact Cathy because the "restraining order[s] that [Chris] continuously gets." When asked if she would have contacted Cathy if not for the protective order,

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[9] Although the court's hearing in September 2016 was for the adoption petition—not the petition to terminate parental rights—Respondent stated she attended to object to the termination of her parental rights.

[10] At the hearing, the parties and the court expressed confusion regarding upon which grounds Petitioner proceeded. In her petition, Petitioner listed statutory grounds for termination as neglect, dependency, and abandonment. However, the court concluded Petitioner "specifically allege[d] neglect, failure to provide financial support, and abandonment." Thus, the court also dismissed the ground of dependency "to the extent there [wa]s an allegation[.]"

Respondent responded affirmatively. Respondent rested and renewed her motion to dismiss.[11]

The court concluded Petitioner proved Respondent willfully abandoned Cathy and the facts supported termination pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). The court proceeded to the dispositional phase of the hearing. Petitioner, Chris, the guardian *ad litem*, and Respondent testified. After concluding termination was in Cathy's best interest, the court terminated Respondent's parental rights.

On 21 July 2017, the court entered an order terminating Respondent's parental rights. Respondent filed timely notice of appeal on 10 August 2017.

II. 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 Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984) (citation omitted). 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).

III. Analysis

[11] The court did not rule on Respondent's renewed motion to dismiss and proceeded to make oral findings regarding grounds for termination.

Respondent contends the trial court erred in terminating her parental rights to Cathy on the ground of willful abandonment. We conclude the order contains insufficient findings regarding the ground for termination for our Court to conduct meaningful appellate review. Thus, we vacate the order and remand for further findings.

"[M]eaningful appellate review requires that trial courts make '*specific findings* of the ultimate facts established by the evidence . . . which are determinative of the questions involved in the action and essential to support the conclusions of law reached.' " *In re D.M.O.*, ___ N.C. App. ___, ___, 794 S.E.2d 858, 861 (2016) (quoting *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982)). "Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts." *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) (citation and quotation marks omitted).

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 . . . ." N.C. Gen. Stat. § 7B-1111(a)(7) (2017).

> Abandonment has been defined as wil[l]ful 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 wi[l]lfully 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). For this ground, "the 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). "Wil[l]ful is an integral part of abandonment and . . . is a question of fact to be determined from the evidence. *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962) (citation omitted). "[A] trial court must make adequate evidentiary findings to support its ultimate finding of willful intent." *D.M.O.*, ___ N.C. App. at ___, 794 S.E.2d at 861 (citation omitted).

Here, Petitioner filed the petition to terminate Respondent's parental rights on 22 September 2016. Thus, the relevant six-month statutory period was from 22 March 2016 to 22 September 2016. The following findings of fact relate to the trial court's conclusion Respondent willfully abandoned Cathy:

> 4. . . . Petitioner has resided with the minor child and Father since November 2009.
>
> . . .
>
> 6. Father has full custody of the minor child[.]
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> . . .
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> 8. No child support order is in place. Mother has not provided financial support for the minor child.
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> 9. Mother has abandoned the minor child for an excess of more than six (6) months immediately preceding the filing

> of the Petition. Mother has had no contact with the minor child in six years.
>
> . . .
>
> 11. There exist facts sufficient to warrant a determination that [Respondent]'s parental rights should be terminated, and in support of this allegation Petitioner established the following additional by clear, cogent, and convincing evidence:
>
> > a. The minor child resided exclusively and continually with Father since November 2009. Father has been the minor child's primary caregiver from nearly the time of her birth and he has exclusive custody.

Although the court made the "ultimate finding" of willful abandonment, the findings are inadequate for meaningful appellate review. The findings do not address the *willfulness* of Respondent's lack of contact and fail to resolve a major conflict in the evidence—whether Respondent *could* contact Cathy during the relevant six-month period, despite the domestic violence protective orders. Respondent testified she did not contact Cathy due to the multiple domestic violence protective orders Chris obtained against her. However, the court made no findings regarding the protective orders, or the custody order, and any possible effect of the orders on Respondent's contact, or lack thereof, with Cathy. *See In re D.T.L.*, 219 N.C. App. 219, 221-22, 722 S.E.2d 516, 517-18 (2012) (holding the evidence did not support a finding of willful abandonment where respondent was under a no-contact order and filed a civil custody action during the six-month period, showing he did not intend to

forego all parental duties). Additionally, the order contains no findings addressing Respondent's 22 July 2016 *pro se* filing with the Office of the Clerk of Court for Mecklenburg County, opposing Petitioner's adoption petition.

Thus, the court failed to make "adequate evidentiary findings to support its ultimate finding of willful intent." *D.M.O.*, ___ N.C. App. at ___, 794 S.E.2d at 861 (citation omitted). Findings regarding this evidence presented to the trial court is necessary for meaningful appellate review. We, therefore, vacate the order and remand to the trial court for further findings regarding Respondent's alleged willful abandonment of Cathy. The trial court may, in its discretion, conduct a new hearing and take additional evidence.

Because we vacate and remand the order, we need not address Respondent's remaining argument regarding the trial court's failure to make sufficient findings of fact to conclude termination of her parental rights was in Cathy's best interest. *See* N.C. Gen. Stat. § 7B-1110(a) (2017) (requiring a trial court to determine whether terminating a parent's rights is in a juvenile's best interest only after it first adjudicates that one or more grounds for terminating the parent's rights exist).

IV. Conclusion

For the reasons stated above, we vacate the order terminating Respondent's parental rights and remand for further findings.

VACATED AND REMANDED.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).