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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1406

Filed: 7 August 2018

Cabarrus County, No. 17 JT 12

IN THE MATTER OF: G.L.H.

Appeal by respondent-mother from order entered 25 September 2017 by Judge Donna H. Johnson in Cabarrus County District Court. Heard in the Court of Appeals 12 July 2018.

Seth B. Weinshenker, P.A., by Seth B. Weinshenker, for petitioner-appellee father.

Richard Croutharmel for respondent-appellant mother.

DIETZ, Judge.

Respondent appeals from an order terminating her parental rights to her minor child, Greg.[1] She contends that the trial court's evidentiary findings are not supported by the record. As explained below, we reject this argument. Although Respondent testified that she attempted to maintain a relationship with Greg, the court's findings indicate that it found that testimony not credible, and those findings

[1] We use a pseudonym to protect the juvenile's identity.

are supported by clear and convincing evidence in the record. We therefore affirm the trial court's order.

Facts and Procedural History

Greg was born in 2011 while Petitioner and Respondent were in a relationship. The parties separated in January 2013 and Greg went to live with Respondent and his maternal grandfather. Petitioner had custody of Greg every other weekend.

In March 2014, the grandfather asked Respondent and Greg to leave his home. As a result, Greg went to live with Petitioner while Respondent sought to stabilize her housing situation. Later that year, Petitioner initiated a child custody action and the trial court awarded primary custody to Petitioner with five hours of supervised visitation for Respondent every Saturday. The custody order, entered in August 2015, found that Respondent had not visited Greg since he went to live with Petitioner in March 2014.

After entry of the custody order, Respondent visited Greg several times but in December 2015 she was arrested and, as a result of a series of guilty pleas and corresponding probation violations, Respondent spent all but a few days from December 2015 through January 2017 in prison or county jail.

On 16 February 2017, Petitioner filed a petition to terminate Respondent's parental rights to Greg on the ground of abandonment. The petition alleged that

Respondent had no contact with Greg beginning with her arrest in December 2015 through the date of filing.

Following a hearing, the trial court entered an order terminating Respondent's parental rights on the ground of abandonment. Respondent timely appealed.

Analysis

Respondent's sole argument is that the trial court's findings are not supported by the record. As explained below, we reject this argument.

In a termination of parental rights proceeding, we review the trial court's findings of fact to determine if they are supported by clear and convincing evidence. N.C. Gen. Stat. § 7B-1111(b); *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984).

A trial court may terminate parental rights upon finding that "[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). "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). "[I]f a parent withholds his presence, his love, his 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." *In re J.D.L.*, 199 N.C. App. 182, 189–90, 681 S.E.2d 485, 491 (2009).

Here, the trial court found that Respondent "willfully abandoned [Greg] for the relevant period preceding the filing of the petition which is August 16, 2016 to February 16, 2017" because she failed to maintain or attempt to maintain any contact with Greg during that time and that her willful actions "demonstrated a settled purpose to withhold her presence, care and affection." The court supported its ultimate findings with a series of evidentiary findings concerning Respondent's failure to contact Greg by phone, letter, or otherwise while incarcerated despite the opportunity to do so. Respondent contests several of these evidentiary findings.

First, Respondent challenges the trial court's finding that she "offered no evidence" to support her claim that she tried to contact Greg by phone and letter while in prison in 2016. Respondent notes that she testified that she tried to contact Greg by phone and letter—thus meaning there was at least *some* evidence supporting her position. Thus, she argues, the trial court erred by finding there was "no evidence" to support her position. We reject this argument because it misconstrues the trial court's findings.

The relevant portion of the court's findings begins by noting that Respondent's testimony "varied" and that she gave inconsistent statements at trial and to the guardian ad litem concerning her efforts to contact Greg. The court noted her trial

testimony before observing that there was "no evidence to support her claims." In this context, the court's reference to "no evidence" meant no *other* evidence that would corroborate her own inconsistent testimony, which the court did not find credible.

In other words, as is often the case in these juvenile proceedings, the court's determination in this case was "dependent in large part on the trial court's assessment of the truthfulness of the witnesses." *In re M.G.C.*, 222 N.C. App. 634, 731 S.E.2d 274 (2012) (unpublished). The court's decision not to credit Respondent's testimony did not—as Respondent argues—improperly shift the burden of proof to her. Every witness testifying in a bench trial is responsible for convincing the court that her testimony is credible, particularly when there is conflicting testimony on the issue; Respondent simply failed to do so here. *In re Whisnant,* 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (holding that it is the trial judge's duty "to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.").

Respondent also argues that, in its findings, "the trial court never indicated that it did not believe" Respondent. When a trial court determines that a witness is not credible, it is certainly helpful for the trial court to expressly state that determination. But it is not required. If the context of the court's order demonstrates that the court found a witness's testimony not credible, we must adhere to that

determination so long as it is supported by clear and convincing evidence. *In re J.W.*, 173 N.C. App. 450, 457–58, 619 S.E.2d 534, 541 (2005).

Here, by discussing Respondent's testimony, observing that it was inconsistent, noting that there was no other evidence to corroborate that testimony, and making the ultimate finding that Respondent willfully failed to maintain any contact with Greg during the relevant time period, the court made the determination that Respondent's testimony was not credible. That determination is supported by the record and we are bound by it. *In re Helms*, 127 N.C. App. 505, 511, 491 S.E.2d 672, 676 (1997) ("[T]he trial court's findings of fact supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings."). Accordingly, we reject Respondent's arguments.

Conclusion

For the reasons discussed above, we affirm the trial court's order.

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).