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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-42

Filed: 15 October 2019

Hyde County, No. 18 JT 10-11

IN RE: L.M.W., L.S.W.

Appeal by respondent-father from an order entered 31 October 2018 by Judge Christopher B. McLendon in Hyde County District Court. Heard in the Court of Appeals 17 September 2019.

Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for Respondent-Appellant Father.

Rose & Johnson, PC, by Windy H. Rose, for Petitioner-Appellee Grandmother.

YOUNG, Judge.

This appeal arises out of the termination of Williams’ parental rights. Upon review, we find that the trial court did not err in finding that Williams’ neglected his children. Therefore, we affirm the decision of the lower court.

I. Factual and Procedural History

In July 2014, Mallory Spencer (“Mother”) and Clifton Williams (“Williams”), the parents of L.M.W. and L.S.W. (collectively “the children”), ended their relationship. At the time, the children were four and five years old. Mother

Opinion of the Court

immediately filed for custody, and agreed to allow Williams to have visitation every other weekend. Williams exercised his visitation once in August 2014, and that was the last time he ever visited or communicated with his children. At a hearing in May 2015, Mother was granted sole custody and Williams did not appear or participate in the hearing. In October 2015, the trial court entered a child support order requiring Williams to pay child support for the children. In February 2016, Mother left the children with their maternal grandmother (“Grandmother”). Grandmother and her husband obtained permanent custody in August 2016. Again, despite having notice, Williams did not participate in the court proceeding.

Williams has been in and out of rehabilitation and incarceration during the majority of the children’s lives. In the summer of 2015, while Williams was not incarcerated, Grandmother agreed that Williams could visit the children. Williams never did so. While incarcerated, Williams never sent cards, letters, or any other communication to the children, or to Grandmother or Mother concerning the children. Williams’ mother has bought the children Christmas gifts, but Williams cannot pay for or pick out the gifts.

Williams was court ordered to pay child support, and although his fiancée paid some amount while he was incarcerated, he never paid anything additional. When Williams was not incarcerated he worked on a fishing boat, and received income from

a property he owned. Williams never provided Grandmother with any financial assistance for the children.

Grandmother and her husband filed to adopt the children. Mother executed a Consent to Adoption. Grandmother then filed to terminate Williams' parental rights. On 31 October 2018 the trial court terminated Williams' parental rights. Williams appealed from that order.

II. Standard of Review

"After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C. Gen. Stat. § 7B-1110(a) (2011). "We review the trial court's decision to terminate parental rights for abuse of discretion." *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002).

III. Termination of Parental Rights

Williams makes four challenges to the trial court's termination of his parental rights. He argues that the trial court erred in finding that he neglected his children; that the trial court erred in finding that he willfully left his children outside the home for more than 12 months without making reasonable progress; that the trial court erred when it found Williams had willfully failed to pay child support when that ground is not available for a private petitioner who is not a parent and no valid order was presented; and that the trial court erred in finding that he was incapable of

providing care for his children when the ground was not alleged in the petition, and the order contained no findings of fact as to whether he lacked an alternative child care arrangement.

IV. Neglect

Williams contends that the trial court erred when it found that Williams neglected his children. We disagree.

The court may terminate parental rights upon a finding that the parent has abused or neglected the juvenile. A determination of whether the juvenile is abused or neglected is decided by definitions provided in N.C. Gen. Stat. § 7B-101. N.C. Gen. Stat. § 7B-1111(a)(1)(2018). The definition of neglect is as follows:

Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) *whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline*; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

N.C. Gen. Stat. § 7B-101 (2018) (emphasis added). In determining whether to terminate a parent's rights on the ground of neglect, "the trial judge may consider . .

. a parent's complete failure to provide the personal contact, love, and affection that [exists] in the parental relationship.” *In re A.J.M.P.*, 205 N.C. App. 144, 149, 695 S.E.2d 156, 159 (2010) (citing *In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982)).

To determine whether the juvenile has been neglected when the parent is incarcerated, the court must look at whether the parent has made an effort to be a part of the juvenile's life despite being imprisoned. *In re C.W.*, 182 N.C. App. 214, 220, 641 S.E.2d, 725, 730 (2007) (reversing the trial court's ruling that the juvenile was neglected by the parent when the incarcerated parent consistently wrote letters, birthday and Christmas cards, and sent money to the juveniles); *In re Bradshaw*, 160 N.C. App. 677, 682-83, 587 S.E.2d 83, 87 (2003) (affirming the trial court's termination of parental rights based on neglect where the incarcerated parent did not provide financial support nor seek any personal contact with the juvenile). *A.J.M.P.*, 205 N.C. App. at 149, 695 S.E.2d at 159.

A.J.M.P. is especially analogous to the present case. The parent in *A.J.M.P.* had been incarcerated for over half of the juvenile's life. This Court affirmed the trial court's conclusion that the parent had neglected the juvenile because the parent had minimal contact with the juvenile, had not seen the child in several years, had not sent any gifts, letters, or cards to the juvenile, and had not provided support for the juvenile's care. *A.J.M.P.*, 205 N.C. App. at 151, 695 S.E.2d at 160. In regards to

Opinion of the Court

financial support, the Court found that, while the parent had no income while incarcerated, he had not provided any financial support prior to his incarceration when he did have income. *Id.*

Here, the trial court properly concluded that Williams neglected his children because he failed to provide them with “proper care, supervision, or discipline.” N.C. Gen. Stat. § 7B-1111(a)(1). Williams visited the children only once after receiving visitation rights in August 2014, and that was the last time he visited or communicated with his children. Williams did not appear or participate in the custody hearing where the mother received full custody, nor the proceeding where the Grandmother and her husband were granted permanent custody in August 2016. Williams did not send the children cards, letters, or communications while incarcerated. The Grandmother told Williams he could visit the children when he was not incarcerated but he did not do so. Williams even saw his children at a local store and did not speak to them. Furthermore, Williams was ordered to pay child support and failed to pay, with the exception of some payments his fiancée made while he was incarcerated.

In light of this Court’s decisions in *A.J.M.P.*, *In re Bradshaw*, and *In re C.W.*, these findings, which are binding on appeal since they are uncontested, are sufficient to support the trial court’s conclusion that Williams neglected the children for the purposes of terminating his parental rights. Moreover, the relevant uncontested

Opinion of the Court

findings of fact support the trial court's conclusion of neglect. Therefore, we find that the trial court did not err in terminating Williams' parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

A finding of any one of the separately enumerated grounds is sufficient to support termination. *In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990). Because the court provided sufficient grounds to support termination as to one of the above challenges, this Court need not address any further challenges.

AFFIRMED.

Judges BRYANT and COLLINS concur.

Report per Rule 30(e).