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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-270

Filed: 4 February 2020

Franklin County, No. 18 JT 20

IN THE MATTER OF: A.J.A-D.

Appeal by respondent from order entered 13 December 2018 by Judge John W. Davis in Franklin County District Court. Heard in the Court of Appeals 19 December 2019.

Sandlin Family Law Group, by Deborah Sandlin, for petitioner-appellee mother.

Kathleen M. Joyce for respondent-appellant father.

No brief filed for guardian ad litem.

DIETZ, Judge.

Respondent appeals from an order terminating his parental rights to his minor child, Alexis,¹ on the ground of willful abandonment.

As explained below, unchallenged findings of fact establish that Respondent had no contact with Alexis, and provided no support for her, for more than six months

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

preceding the filing of the petition despite having the ability to do so. Those findings readily support the trial court's conclusions concerning willful abandonment.

Likewise, the trial court did not violate the statutorily mandated two-stage process for termination proceedings because, although the court conducted the adjudicatory and dispositional phases in one consolidated hearing, the court properly adjudicated the existence of the ground for termination before determining whether termination was in the juvenile's best interests. Accordingly, we affirm the trial court's order.

Facts and Procedural History

Alexis was born to Petitioner and Respondent in November 2011. At that time, Petitioner and Respondent were living together in Cary but were not married. In September 2012, Respondent moved out of the family home. The parties never entered into a formal custody plan, visitation schedule, or financial support arrangement, but they had an informal agreement that Respondent would pay Petitioner \$240 per month to support Alexis.

Petitioner and Alexis moved in with Petitioner's parents in November 2012 and Petitioner bought her own home in August 2013. Petitioner married in March 2018.

Petitioner filed a petition to terminate Respondent's parental rights on 15 May 2018, alleging Respondent willfully abandoned Alexis for the six months preceding

the filing of the petition as shown by his lack of contact with Alexis and his failure to provide for her support and maintenance. *See* N.C. Gen. Stat. § 7B-1111(a)(7). Petitioner's husband also filed a petition to adopt Alexis.

After a hearing on 6 December 2018, the trial court entered an order terminating Respondent's parental rights on the ground of abandonment. Respondent appealed.

Analysis

I. Adjudication of ground of willful abandonment

Respondent argues that the trial court erred in terminating his parental rights on the ground of willful abandonment because the trial court's findings of fact are insufficient to support its conclusions; the court failed to make an ultimate finding of fact that he willfully abandoned Alexis; the court's findings do not show the court specifically considered the relevant six month period; the findings were insufficient to rule out explanations for Respondent's conduct other than willfulness; and the findings failed to address the challenges Respondent faced because he lived in a different city than Alexis and because of Alexis's young age.

We reject these arguments. "This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the

findings of fact support the court's conclusions of law." *In re C.J.H.*, 240 N.C. App. 489, 497, 772 S.E.2d 82, 88 (2015).

"[M]eaningful appellate review requires that trial courts make *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached." *In re D.M.O.*, 250 N.C. App. 570, 572, 794 S.E.2d 858, 861 (2016) (citations omitted). "Ultimate facts are the final resulting effect reached by processes of logical reasoning from the evidentiary facts." *Id.*

Grounds exist for terminating 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." N.C. Gen. Stat. § 7B-1111(a)(7).

"Abandonment has been defined as willful 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 willfully 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). "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 Young*, 346 N.C. 244, 251, 485 S.E.2d 612, 617 (1997).

Here, the relevant six month period was between 15 November 2017 and 15 May 2018. The trial court made numerous findings of fact addressing Respondent's abandonment of Alexis:

25. At all times since September, 2012, the Respondent was kept informed of the Petitioner's contact phone number and address for her and the minor child.

26. The Respondent has only seen the minor child 10 times since September, 2012, a period of over 6 years.

27. The minor child has not stayed overnight with the Respondent since the Respondent left the residence in September, 2012.

28. The respondent has only had sporadic phone contact with the minor child in the past six years.

29. On one occasion, Respondent sent a text message to Petitioner on Christmas Eve and asked if he could see the minor child on Christmas. The Petitioner initially responded that she and the child already had plans for Christmas day and they would have to do a visit later. However, Petitioner re-arranged their plans to accommodate a visit by Respondent. Petitioner called the Respondent's phone to notify him that he could have a visit, and sent a text to Respondent's phone notifying him that he could visit with the child on Christmas. Despite Petitioner's communications, the Respondent did not respond, and did not visit with the child on Christmas day.

30. When the minor child was injured and had to be taken to the emergency room for medical care, Petitioner notified Respondent of her injury and condition. Despite having knowledge of the minor child's injury, the Respondent did not go to the hospital to check on or be with the minor child.

...

32. Respondent's last contact with the minor child, prior to the filing of the Petition in this matter, was on February 19, 2017, a period of approximately 15 months.

33. Respondent did speak with the minor child, by phone, in early November, 2018 (after the Petition had been filed). The Respondent testified that when he did speak with the minor child, the minor child had very little to say to him. Further, the Respondent admitted that he and the minor child really have no relationship at this point in time.

...

36. At no point, since September, 2012, did the Respondent file any court action or seek a court order providing for visitation between the minor child and him.

...

40. The Respondent is presently employed as a supervisor with a traffic control company, working in and around the Charlotte, NC area. Respondent realizes a net (after tax) income from that employment of \$2,000.00 per month and has held that job for 2 years and 3 months (since September, 2016).

41. The Petitioner and Respondent agreed that Respondent would pay \$240.00 per month to [Petitioner] as support for the minor child.

42. Pursuant to that agreement, the Respondent provided Petitioner with a money order in the sum of \$240.00 in May, 2016.

...

45. Respondent admits he paid nothing as support for the minor child for the six months immediately preceding the filing of the Petition in this case on May 15, 2018.

46. The Court finds that Respondent has paid no monies to Petitioner as support for the minor child since May, 2016.

47. Respondent admitted he willfully and purposely did not provide any monies to Petitioner as support for the minor child because he was not satisfied with the visitation he was having with the child.

Respondent does not challenge these evidentiary findings of fact, and they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Respondent argues that these findings fail to specifically address the relevant six-month period. This is incorrect. The trial court expressly found that “Respondent’s last contact with the minor child, prior to the filing of the Petition in this matter, was on February 19, 2017, a period of approximately 15 months” before the filing of the petition. Thus, the court found that Respondent had no contact with the child during the relevant six-month period.

Respondent also contends that many of the trial court’s findings concerned events outside the relevant six-month time frame. But, as Respondent concedes, “the trial court may consider [a] respondent’s conduct outside this window in evaluating [the] respondent’s credibility and intentions.” *In re C.J.H.*, 240 N.C. App. at 503, 772 S.E.2d at 91. Thus, it was not error for the trial court to consider this evidence.

Respondent next argues that the trial court’s findings failed to address the challenges created by Alexis’s young age and the fact that Respondent and Alexis lived in different cities. But “the trial court is not required to make findings of fact on

all the evidence presented, nor state every option it considered.” *In re J.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005).

From the evidentiary findings above, the trial court made the following ultimate findings of fact:

37. Respondent’s conduct in refusing to visit with the minor child on a regular, consistent basis was a willful choice by respondent.

38. Respondent’s conduct in refusing to speak with the minor child by phone on a regular, consistent basis was a willful choice by the Respondent.

. . .

48. The Respondent has willfully neglected and refused to perform the natural and legal parental obligations of care and support for the minor child.

49. The Respondent has willfully withheld his presence, love, care and opportunity to display filial affection towards the minor child.

50. The Respondent has willfully neglected and refused to lend support and maintenance for the minor child.

The court’s evidentiary findings concerning Respondent’s lack of visits, communication, financial support, and general contact with Alexis despite the ability to do so readily support the court’s ultimate findings that Respondent’s conduct was willful.

Finally, Respondent argues that the trial court’s ultimate findings failed to precisely recite the statutory language of N.C. Gen. Stat. § 7B-1111(a)(7). But this is

not error. In an order addressing a petition to terminate parental rights, the trial court is required to “find the facts, and . . . adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent.” N.C. Gen. Stat. § 7B-1109(e). The trial court’s findings of fact, including its ultimate findings, must support its conclusions of law on this question; this can be done without precisely reciting the wording in the applicable statute. *In re D.M.O.*, 250 N.C. at 572, 794 S.E.2d at 861.

Here, the trial court concluded that “[t]here exists a ground to terminate Respondent’s parental rights in and to the minor child in that the Respondent has willfully abandoned the minor child for at least six consecutive months immediately preceding the filing of the Petition in this matter, pursuant to N.C.G.S. § 7B-1111(a)([7]).” The court’s findings establish that Respondent willfully chose not to visit Alexis; willfully failed to have phone contact with Alexis on a consistent basis; willfully failed to perform the natural and legal parental obligations of care and support for Alexis; willfully withheld his presence, love, care and opportunity to display filial affection towards Alexis; and willfully failed to lend support and maintenance for the minor child despite the ability to do so for a period of at least six months preceding the filing of the petition. Moreover, the findings show that Respondent had no contact with Alexis for approximately 15 months and provided no

financial support for almost two years before the petition. These ultimate findings support the trial court's conclusion of law concerning willful abandonment.

II. Alleged violation of statutory mandates

Respondent next argues the trial court violated the statutory mandates of N.C. Gen. Stat. §§ 7B-1109 and 7B-1110 because it failed to adjudicate grounds for termination before making its best interests determination. Respondent contends this error is shown by the court's failure to distinguish in its written order the two separate inquiries, as shown by the court setting forth its findings of fact on both adjudication and disposition before it made any conclusion of law adjudicating the existence of a ground to terminate his parental rights. Respondent also contends that the trial court erroneously applied the "clear, cogent and convincing evidence" standard to its findings of fact on disposition. We reject these arguments.

Sections 7B-1109 and 7B-1110 provide that termination of parental rights is a two-stage process. First, "[t]he court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent." N.C. Gen. Stat. § 7B-1109(e). "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). But it is well established that "a trial court may combine the N.C.G.S. § 7B-1109

adjudicatory stage and the N.C.G.S. § 7B-1110 dispositional stage into one hearing, so long as the trial court applies the correct evidentiary standard at each stage and the trial court's orders associated with the termination action contain the appropriate standard-of-proof recitations." *In re R.B.B.*, 187 N.C. App. 639, 643–44, 654 S.E.2d 514, 518 (2007).

Here, in its written order, the trial court noted that it made both its adjudicatory and dispositional findings "by clear, cogent and convincing evidence." This is the correct evidentiary standard for findings of fact made as part of the trial court's adjudication of grounds for termination. *See In re C.J.H.*, 240 N.C. App. at 497, 772 S.E.2d at 88. However, when making its best interests determination, the trial court need only make dispositional findings that are "supported by competent evidence." *In re C.M.*, 183 N.C. App. 207, 212, 644 S.E.2d 588, 593 (2007). By employing the heightened "clear, cogent and convincing" standard of proof in making its dispositional findings, the trial court misapplied the relevant evidentiary standard.

But Respondent does not show how he was prejudiced by the use of this higher standard, which benefited him because Petitioner had the burden of proof. Indeed, Respondent does not challenge any of the court's best interest findings or identify any evidence in the record that could either call those findings into question or support additional findings favorable to him.

Moreover, although the trial court combined the adjudicatory and dispositional stages into a single evidentiary hearing, in rendering its judgment from the bench, the court made its findings and conclusion on adjudication *before* making its findings and conclusion on disposition.

Likewise, in its written order, the court made fifty findings of fact on adjudication. The order then stated the court proceeded to disposition, where it made nine additional findings of fact. Finally, the order includes four conclusions of law, wherein the court concludes the ground of abandonment exists to terminate Respondent's parental rights and that it is in Alexis's best interests to terminate Respondent's parental rights. Nothing in the hearing transcript or in the written order suggests the trial court did not engage in the statutorily required two-stage process. Accordingly, we hold that the trial court did not violate the statutory mandates of N.C. Gen. Stat. §§ 7B-1109 and 7B-1110.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).