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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-208

Filed: 17 March 2020

Guilford County, No. 15 JT 239

IN THE MATTER OF: P.N.K.

Appeal by respondent-father from order entered 9 November 2018 by Judge Tonia Cutchin in Guilford County District Court. Heard in the Court of Appeals 27 February 2020.

Mercedes O. Chut for petitioner-appellees.

Sean P. Vitrano for respondent-appellant father.

No brief for Guardian ad Litem.

BRYANT, Judge.

This appeal arises from a private termination of parental rights action. Respondent-father appeals from the trial court's order terminating his parental rights to his minor child P.N.K. ("Paul").¹ For the reasons stated herein, we affirm.

Background

¹ Pseudonyms are used to protect the identity of the juveniles and for ease of reading. See N.C.R. App. P. 42(b)(1).

Paul's biological mother, a resettled Liberian refugee, gave birth to Paul in November 2013. While respondent-father was present at the hospital for Paul's birth, he was not listed as the father on Paul's birth certificate.

By 2015, Paul's mother² became unable to care for Paul and Paul's older sister, Carly.³ She was not receiving assistance from respondent-father, who was the putative father of both Paul and Carly at the time. Paul's mother contacted an acquaintance from church who worked with resettlement agencies and refugee families and expressed her desire to have someone else provide for the children's needs. The acquaintance introduced the mother to petitioners, a couple who were members of the same church and were interested in adopting children.

In April 2015, Paul and Carly began residing in the custody and care of petitioners. On 24 April 2015, the mother executed a relinquishment of her parental rights to Carly and informed petitioners that she wanted to give respondent-father an opportunity to come and get Paul. After respondent-father failed to do so, the mother executed a relinquishment of her parental rights to Paul on 29 April 2015. Both relinquishments, however, were defective.

On 26 August 2016, petitioners were granted sole physical and legal custody of Paul and Carly. On 15 June 2017, petitioners filed a petition to terminate the

² The biological mother is not a party to this appeal.

³ Carly is not a subject of this appeal.

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parental rights of respondent-father to Paul.⁴ The petition alleged that petitioners “had the *de facto* custody, care, and control of [Paul] since April of 2015, when the mother left [him] solely and continuously in their care” and that respondent-father had not had any contact with Paul or provided any financial support for Paul since April 2015. Petitioners asserted willful abandonment, pursuant to N.C.G.S. § 7B-1111(a)(7), and failure to legitimate, pursuant to N.C.G.S. § 7B-1111(a)(5), as grounds for termination. DNA testing conducted on 21 September 2017 established that respondent-father was the biological father of Paul.

The petition came on for hearing in Guilford County District Court before the Honorable Tonia A. Cutchin on 27 February 2018 and 9 October 2018. By order entered 9 November 2018, the trial court concluded that grounds existed to terminate respondent-father’s parental rights to Paul under both grounds alleged by petitioners. The trial court also concluded that it was in Paul’s best interests to terminate respondent-father’s parental rights. *See* N.C.G.S. § 7B-1110(a) (2019). Respondent-father timely appeals.

Discussion

⁴ The petition alleged that respondent-father was the putative father of both Paul and Carly and sought to terminate the parental rights of respondent-father and the biological mother to Paul and Carly. Subsequent DNA testing conducted on 21 September 2017 confirmed respondent-father was the biological father of Paul, but not the biological father of Carly. The instant appeal involves only the termination of respondent-father’s parental rights to Paul.

On appeal, respondent-father challenges the trial court's conclusion that grounds existed to terminate his parental rights pursuant to N.C.G.S. § 7B-1111(a)(5) and (7). "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 A.B.*, 239 N.C. App. 157, 160, 768 S.E.2d 573, 575 (2015) (citation omitted). "If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 (2009) (internal quotation marks and citation omitted). Unchallenged findings of fact "are conclusive on appeal and binding on this Court." *Id.* at 532, 679 S.E.2d at 909. "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and internal quotation marks omitted).

It is well established that a finding of a single ground under N.C.G.S. § 7B-1111 is sufficient to support the termination of parental rights. *In re J.M.W.*, 179 N.C. App. 788, 789, 635 S.E.2d 916, 917 (2006). Although the trial court concluded that grounds existed to terminate respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(5) and (7), we address respondent-father's arguments only with regard to termination pursuant to section 7B-1111(a)(5).

Under N.C.G.S. § 7B-1111(a)(5), the trial court may terminate a father's parental rights if it finds the father has failed to legitimate the juvenile. That is,

[t]he father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights, done any of the following:

- a. Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services. The petitioner or movant shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and the Department's certified reply shall be submitted to and considered by the court.
- b. Legitimated the juvenile pursuant to provisions of G.S. 49-10, G.S. 49-12.1, or filed a petition for this specific purpose.
- c. Legitimated the juvenile by marriage to the mother of the juvenile.
- d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
- e. Established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding.

N.C.G.S. § 7B-1111(a)(5) (2019). In order to terminate parental rights under this statutory provision, the trial court must make specific findings of fact as to all five subsections, and the petitioner bears the burden of proving the father has failed to comply with any of the five subsections. *See In re I.S.*, 170 N.C. App. 78, 88, 611 S.E.2d 467, 473 (2005). "Although a father may have 'acted consistently with acknowledging his paternity,' strict compliance with the foregoing [five] requirements

is required in order for a father to prevent termination of his parental rights.” *In re S.C.R.*, 198 N.C. App. at 533, 679 S.E.2d at 910 (quoting *A Child’s Hope, LLC v. Doe*, 178 N.C. App. 96, 105, 630 S.E.2d 673, 678 (2006)).

Here, the trial court made the following findings to support its adjudication that respondent-father failed to legitimate Paul:

1. . . . [Paul] was born on November 19, 2013 [He was] born in Guilford County, North Carolina. No father[] [is] listed on [his] birth certificate[].

. . . .

3. . . . [Paul was] born out of wedlock and the mother has never been married.

4. The biological father of the juvenile [Paul] is [respondent-father]. Paternity was established by DNA testing conducted on September 21, 2017. He is not listed on the birth certificate. He resides in Tennessee.

. . . .

12. The children came into the petitioners’ care due to the mother’s inability to care for them and her desire that someone else provide for their needs. She was a resettled Liberian refugee and was not receiving assistance from the children’s fathers. . . .

. . . .

14. The mother and [respondent-father] were involved during the period immediately preceding the relinquishment of the children in 2015. Their relationship was turbulent and included domestic violence. [Respondent-father] did not provide for the needs of the juvenile [Paul] during that time.

....

16. No father has legitimated, filed an affidavit of paternity, or legitimated [Paul], as is evidenced by the Affidavit from the North Carolina Department of Health and Human Services submitted by the petitioners.

....

19. [Respondent-father] has not spoken with [petitioners] or with the juveniles since April of 2015. He has not provided any financial assistance, despite having the ability to earn an income, and in fact earning an income. He has not set aside any funds for the benefit of the juvenile. He has known of the location of the child and how to contact the petitioner by the end of 2016 at the latest, but has failed to do so. He testified that he resided in High Point, North Carolina, from March through May of 2017. During that time he failed to inquire of the petitioners regarding the wellbeing of [Paul]. He has never contacted the child directly, sent him cards, gifts, letters, or tokens of affection. He has not inquired about the child's welfare.

....

23. Grounds exist to terminate to [sic] parental rights of [respondent-father] . . . pursuant to N.C.G.S. § 7B-1111(a)(5), in that [respondent-father] of [Paul], born out of wedlock, ha[s] not, prior to the filing of a petition for termination of parental rights, done any of the following:

(1) Filed an affidavit of paternity in a central registry maintained by the Department of Health and Human Services;

(2) Legitimated the juvenile pursuant to the provisions of [N.C.G.S. §§] 49-10 [and] 49-12.1, or filed a petition for this specific purpose;

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(3) Legitimated the juvenile by marriage to the mother of the juvenile;

(4) Provided substantial financial support or consistent care with respect to the juvenile and the mother;

(5) Established paternity through [N.C.G.S. §§] 49-14, 110-32, 130A-101, 130A-118, or other judicial proceeding.

Respondent-father does not dispute the trial court's findings that he failed to satisfy the requirements of subsections (a), (b), (c), and (e) of N.C.G.S. § 7B-1111(a)(5), and thus, they are binding on appeal. Instead, he challenges the trial court's findings relating to subsection (d) of N.C.G.S. § 7B-1111(a)(5). Respondent-father argues that the trial court's findings of fact 19 and 23, relating to his failure to provide substantial financial support or consistent care with respect to Paul and the biological mother, are not supported by the evidence. We disagree.

Respondent-father contends that he provided "regular financial support and care to Paul from his birth until [the biological mother] placed Paul in Petitioners' custody" in April 2015. Citing to his own testimony, respondent-father maintains he provided substantial financial support or consistent care by: buying "everything that [Paul] needed" when he was born; transporting Paul to daycare and purchasing clothes, shoes, and food for him after he and the biological mother ended their relationship in May 2013; moving to Tennessee in January 2015 after discovering Paul and the biological mother had relocated there and having regular contact with

the biological mother and providing care for Paul; providing financial support for Paul after respondent-father moved to Rhode Island in February or March of 2015; and attempting to visit Paul in March 2015 and leaving clothing and shoes for him after the biological mother refused to open the door for respondent-father.

Contrary to respondent-father's testimony, there was clear, cogent, and convincing evidence presented to support the trial court's findings that he failed to provide substantial financial support or consistent care to Paul and the mother. As to the time period before petitioners took Paul and Carly under their care, the mother's acquaintance from church testified that the mother "was doing it by herself, and she was not getting the support that she thought she should have gotten" from respondent-father. One of the petitioners testified that at the time Paul and Carly came under the petitioners' care in April of 2015, the mother was not receiving any clothes, food, money, or assistance from respondent-father. The petitioner had never spoken with respondent-father and testified that respondent-father had never tried to directly contact her. From 2015 until the petition was filed in June 2017, the petitioner had not received any financial assistance, clothes, food, gifts, letters, or tokens of affection from respondent-father on behalf of Paul. Thus, the trial court was free to reject respondent-father's testimony and to draw the reasonable inference that respondent-father had failed to comply with subsection (d). *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) ("[I]t 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.”). Moreover, even if respondent-father’s contentions were true, the fact that he failed to provide any support or care to Paul and the mother after March 2015 surely cannot constitute “substantial” financial support or “consistent” care.

As to the time period after March 2015, respondent-father asserts he was unable to provide financial support or care to Paul and the mother because he did not know where Paul was located, he did not have a valid telephone number for the biological mother, and the biological mother had “cut off” contact with him. In essence, respondent-father is arguing that any lack of financial support or care to Paul and the mother after March 2015 was not willful. This argument is unavailing. No such showing of willfulness is required to support termination pursuant to N.C.G.S. § 7B-1111(a)(5)(d), and it is well established that the requirements of N.C.G.S. § 7B-1111(a)(5) are strictly applied. *In re J.D.S.*, 170 N.C. App. 244, 258, 612 S.E.2d 350, 359 (a finding that the father had an ability to pay is not required), *cert. denied* 360 N.C. 64, 623 S.E.2d 584 (2005); *In re Hunt*, 127 N.C. App. 370, 374, 489 S.E.2d 428, 430 (1997) (holding that the statute “only requires a showing that [the putative father] in fact did not provide substantial support or consistent care to the child or the mother”); and *A Child’s Hope, LLC*, 178 N.C. App. at 104, 630 S.E.2d at 678 (“[T]he statute necessarily establish[es] bright line requirements for putative

fathers to demonstrate that they have assumed some of the burdens of parenthood.”). Furthermore, the evidence and findings demonstrate that respondent-father failed to provide any financial assistance, inquire about the wellbeing of Paul, contact Paul directly, or send cards, gifts, letters, or tokens of affection even after he became aware of Paul’s location in December 2016.

Respondent-father attempts to distinguish himself from the fathers in *A Child’s Hope, LLC*, and *In re M.A.I.B.K.*, 184 N.C. App. 218, 645 S.E.2d 881 (2007), wherein this Court upheld termination under section 7B-1111(a)(5). In *A Child’s Hope, LLC*, the father was notified about the biological mother’s pregnancy in October 2001. *A Child’s Hope, LLC*, 178 N.C. App. at 98, 630 S.E.2d at 674–75. Subsequently, he withdrew from school and moved back home with intentions to care for the minor child. *Id.* In June 2002, the biological mother falsely informed the father that she had miscarried the child. *Id.* at 99, 630 S.E.2d at 675. The father did not become aware of his child’s existence until he was served with a summons to terminate his rights in January 2003. *Id.* at 98, 630 S.E.2d at 674. While acknowledging that the biological mother thwarted the father’s parental rights by lying about the status of the pregnancy, this Court reiterated that the bright line provisions of section 7B-1111(a)(5) are strictly applied, regardless of whether the father was aware of his child’s existence. *Id.* at 103, 630 S.E.2d at 677. This Court reversed the trial court’s order denying the petition to terminate the respondent-father’s parental rights under

N.C.G.S. § 7B-1111(a)(5), concluding that section 7B-1111(a)(5) “is explicit in its requirements and there was no evidence that respondent[-father] met those requirements.” *Id.* at 105, 630 S.E.2d at 678.

In *In re M.A.I.B.K.*, the biological mother informed the respondent-father that he was the minor child’s father within two months of her birth in 1999. *In re M.A.I.B.K.*, 184 N.C. App. at 221, 645 S.E.2d at 883. Before he could arrange a paternity test, the respondent-father claimed that the biological mother “just disappeared” with the minor child. *Id.* The respondent-father argued that the actions of the biological mother prevented him from taking any steps to establish paternity or provide support and care for his child. *Id.* at 222–23, 645 S.E.2d at 885. Yet, this Court affirmed the trial court’s termination of the respondent-father’s parental rights pursuant to N.C.G.S. § 7B-1111(a)(5), holding that the record was clear that the respondent-father had taken none of the steps required under section 7B-1111(a)(5) to assume his responsibilities as the child’s father. *Id.* at 223–24, 645 S.E.2d at 885. Despite knowing that his friend was in contact with the biological mother, the respondent-father made no attempt to contact her regarding his minor child for over a period of almost seven years. *Id.* at 224, 645 S.E.2d at 885. Even once the respondent-father learned conclusively that he was the minor child’s father in June 2006, after the petition to terminate his parental rights was filed, he took no action

to communicate with or provide support for his child. *Id.* at 221–24, 645 S.E.2d at 883-84.

Respondent-father argues that while the fathers in *A Child's Hope, LLC*, and *In re M.A.I.B.K.* “took none of the steps” required by section 7B-1111(a)(5), he provided financial support and care to Paul from birth until he was placed with petitioners. The success of respondent-father’s argument requires this Court to reweigh the evidence and substitute our judgment for that of the trial court. We decline to do so. *See In re Whisnant*, 71 N.C. App. at 441, 322 S.E.2d at 435. Respondent-father’s argument also ignores the bright line requirements of 7B-1111(a)(5) and its strict application. Analogous to the circumstances found in *A Child's Hope, LLC*, and *In re M.A.I.B.K.*, the biological mothers’ actions may have frustrated the fathers’ efforts to locate, contact, and provide for their children. Yet, our Court was clear in both cases that section 7B-1111(a)(5) is explicit in its requirements, regardless of whether the father is aware of the child’s existence or location.

We conclude that the trial court made the requisite findings, supported by clear, cogent, and convincing evidence, as to each of the five requirements enumerated in N.C.G.S. § 7B-1111(a)(5). Accordingly, we affirm the trial court’s order terminating respondent-father’s parental rights to Paul.

AFFIRMED.

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Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).