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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-177

No. COA21-529

Filed 15 March 2022

Gaston County, No. 18 JT 287

IN THE MATTER OF K.L.L.

Appeal by respondent from order entered 14 June 2021 by Judge John K. Greenlee in Gaston County District Court. Heard in the Court of Appeals 23 February 2022.

*Elizabeth Myrick Boone for petitioner-appellee Gaston County Department of Social Services.*

*Batch, Poore & Williams, P.C., by Sydney Batch, for respondent-appellant father.*

*N.C. Administrative Office of the Courts Guardian Ad Litem Program, by staff attorney Michelle FormyDuval Lynch, for the guardian ad litem.*

TYSON, Judge.

¶ 1 Respondent appeals an order by the district court terminating his parental rights. We affirm.

## I. Background

¶ 2 Respondent is the biological father of six-year-old Kaitlyn (Pursuant to N.C.R. App. P. 42(b), a pseudonym is used to protect the identity of the juvenile.).

¶ 3 Kaitlyn's mother suffered from a drug addiction and was hospitalized on

multiple occasions for overdoses. Kaitlyn was placed in a temporary safety placement. Respondent's record contains criminal convictions for trafficking in cocaine and heroin. Respondent had engaged in domestic violence. A one-year 50B Protective Order was entered against Respondent on 10 January 2018. Police responded to Mother's home for domestic violence on 20 February 2018. Respondent was charged with Assault by Strangulation, Assault Inflicting Serious Injury with a Minor Present, violation of the Domestic Violence order and Interference with Emergency Communication.

¶ 4 Gaston County Department of Health and Human Services, Division of Social Services ("DSS") filed a petition alleging neglect and dependency of Kaitlyn. A non-secure custody order was entered in November 2018 after the safety placement family could no longer host Kaitlyn. After a nonsecure custody hearing on 18 December 2018, Kaitlyn was placed in the custody of her paternal grandmother.

¶ 5 In February 2019, DSS filed a motion for review after the paternal grandmother refused to transport Kaitlyn for visits, allowed Respondent to have unsupervised visits with Kaitlyn, and Respondent assaulted Kaitlyn's mother and threatened to kill her. That motion was continued to 5 March 2019 due to Respondent's absence. Respondent failed to appear on 5 March 2019, but his counsel appeared. Kaitlyn was placed into foster care. The court adjudicated Kaitlyn as neglected and dependent on 18 April 2019.

¶ 6 Over a year later, DSS filed a petition for termination of parental rights on 4 June 2020. A hearing was held almost another year later on 10 May 2021 on DSS' petition. The trial court entered an order terminating the parental rights of Respondent 14 June 2021. Respondent appeals.

## II. Jurisdiction

¶ 7 Appellate review is proper pursuant to N.C. Gen. Stat. §7B-1001(a)(7) (2021).

## III. Issues

¶ 8 Respondent argues the trial court erred by terminating his parental rights pursuant to: (1) N.C. Gen. Stat. § 7B-1111(a)(7) (willfully abandoned); (2) N.C. Gen. Stat. § 7B-1111(a)(1) (abuse or neglect); and, (3) N.C. Gen. Stat. § 7B-1111(a)(2) (failure to make reasonable progress).

## IV. Standard of Review

¶ 9 "We review a trial court's adjudication . . . to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. The trial court's conclusions of law are reviewable de novo on appeal." *In re of K.J.E.*, 378 N.C. 620, 622, 2021-NCSC-109, ¶ 5, 862 S.E.2d 620, 621–22 (citation omitted). "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).

## V. Termination of Respondent's Rights

¶ 10 "The burden in these proceedings is on the petitioner or movant to prove the facts justifying the termination by clear and convincing evidence." N.C. Gen. Stat. § 7B-1111(b) (2021).

¶ 11 If the trial court adjudicates at least one ground for termination, "the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights." *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citations and quotation marks omitted). "[A]n adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order." *In re J.S.,* 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

**A. Termination Pursuant to N.C. Gen. Stat. § 7B-1111(a)(7)**

¶ 12 A trial court may terminate parental rights upon a finding the 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) (2021). "[A]bandonment requires a 'purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child.'" *In re L.M.M.*, 375 N.C. 346, 349, 847 S.E.2d 770, 773 (2020) (citation omitted).

¶ 13 Here, Respondent admits he did not engage in any court-ordered services during the relevant time, but he argues he maintained contact with the social worker and requested to see Kaitlyn. Respondent admitted at trial he was present in court

on 22 January 2019 and failed to return until 16 March 2021. Respondent admitted he was "gone for a couple of years" and did not visit with Kaitlyn for one-and-a-half-years.

¶ 14 The trial court made uncontested findings of fact:

> 31. [Respondent] did discuss with social worker . . . in November and December of 2019 about setting up a visit with the juvenile; however, [Respondent] failed to follow through with the social worker and did not make himself available to visit with the juvenile until March 19, 2021.
>
> 32. That beginning in February of 2019 through December of 2020, [Respondent] had five (5) telephone conversations with the Department to see what he needed to do regarding visiting the juvenile; [Respondent] acknowledged that he understood, and yet did nothing.
>
> 33. That from February of 2019 to January of 2021, Respondent initiated a total of four (4) phone calls to the Department to discuss the juvenile; no other effort to contact the Department was made by Respondent during this time period to inquire as to the wellbeing of the juvenile.
>
> 34. That from February of 2019 to March of 2021, [Respondent] had failed to acknowledge the juvenile on her birthdays or holidays, including Christmas.
>
> 35. That from February of 2019 to March of 2021, [Respondent] had failed to provide the juvenile with financial support, clothing, gifts, cards, letters or any other necessary items for the care and comfort of the juvenile.
>
> 36. That from February of 2019 to March of 2021, [Respondent] had deprived the juvenile of his love, care and affection.

> . . .
>
> 46. [Respondent] has failed to attend regular visitation with the juvenile. [Respondent] failed to visit the juvenile between February 18, 2019 to March 19, 2021.
>
> 47. [Respondent] has failed to contribute to the financial support of the juvenile and has failed to provide for the basic needs of the juvenile.

At trial, Respondent testified:

> Q. This Petition was filed in June of 2020 and what the Court—they look at the six months prior to that. So from January of 2020 to June of 2020 you didn't do anything.
>
> [Respondent]. And you're absolutely right. And my thing—my response to that would be—and I'm not saying this is okay—but I was in Bertie County. I had no knowledge of what was going on.

¶ 15 Respondent made no efforts to fulfill any parental duty or responsibility to Kaitlyn and completely abandoned her from February 2019 to March 2021, over a two-year period, which includes the relevant six-month statutory time. This is verified by his own admission. Respondent does not contest the trial court's findings. The trial court properly found and concluded Respondent had willfully avoided parental responsibility throughout Kaitlyn's life and specifically during the relevant six-month period of the trial court's findings. Respondent's arguments are without merit.

**B. Termination Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1)**

¶ 16 Parental rights may be terminated if the trial court finds the "parent has

abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101." N.C. Gen. Stat. § 7B-1111(a)(1) (2021).

¶ 17 A child is neglected:

> whose parent . . . does any of the following:
>
> a. Does not provide proper care, supervision, or discipline.
>
> b. Has abandoned the juvenile.
>
> . . . .
>
> d. or whose parent . . . has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter;
>
> e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.

N.C. Gen. Stat. § 7B-101(15)(a)-(e) (2021).

¶ 18 Here, the trial court made these findings of fact:

> 42. That domestic violence existed between the Respondent/parents at the time the juvenile entered the Department's custody. Previously a Court of competent jurisdiction found that there was domestic violence between [Respondent] and [Mother]. [Respondent] has pending criminal charges including two counts of Assault by Strangulation, Assault Inflicting Serous Injury with Minor Present, Assault on a Female, two counts Interfere with Emergency Communication, DVPT Violation with

> Deadly Weapon, Break/Enter to Terrorize/Injure. The alleged victim in all of these incidents is [Mother].
>
> 43. [Mother] did testify that she made up the allegations of domestic violence; however, [Mother] filed sworn complaints that the domestic violence happened, obtained a Domestic Violence Protective Order against [Respondent], informed the Department of the domestic violence; showed social workers the injuries [Mother] suffered from the domestic violence; and [Respondent] stated that he did send text messages to [Mother] that stated he was going to kill her.
>
> 44. [Respondent] has failed to complete any domestic violence treatment, though he did attend some domestic violence offender treatment with IMPACT until he was terminated from the program for violating the attendance policy. His attendance began well after the filing of the Petition for Termination of Parental Rights.

¶ 19 The initial juvenile Petition alleged Respondent "does have criminal convictions to include trafficking in cocaine and heroin." Respondent was ordered to: (1) refrain from using/abusing all illegal/mind altering substances; (2) complete mental health and substance abuse assessment; (3) follow recommendations from the mental health and substance abuse assessments; and, (4) submit to drug screens.

¶ 20 The trial court found:

> 39. [Respondent] has completed a substance abuse/mental health dual assessment and attended one (1) therapy session. [Respondent] also participated in some substance abuse treatment that was required through Pre-Trial Services as a condition of his pre-trial release.
>
> 40. [Respondent] has not completed substance

> abuse/mental health treatment and did test positive for cocaine and marijuana in March of 2021. [Respondent] completed the substance abuse/mental health assessment and participated in some treatment well after the filing of the Petition for Termination of Parental Rights.
>
> 41. [Respondent] had failed to submit to all the Department's requested drug screens until March of 2021. [Respondent] tested positive on March 9, 2021 for cocaine and marijuana and tested positive for marijuana on March 16, 2021. [Respondent] has failed to demonstrate a period of at least six (6) months verifiable sobriety.

¶ 21 Clear, cogent, and convincing evidence supports the trial court's findings and conclusions that Respondent had failed to provide parental care and provision and failed to comply with his family plan. The trial court's conclusion on this ground is affirmed.

**C. Termination Pursuant to N.C. Gen. Stat. § 7B-1111(a)(2)**

¶ 22 A trial court may terminate parental rights if it finds the parent "has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2) (2021).

¶ 23 Kaitlyn was removed from Mother's care for parental substance abuse, domestic violence, and lack of a safe caretaker. Mother has not appealed from the termination order. As set out in the above section and incorporated herein, Respondent made no progress to address his illegal substance abuse to meet his case

plan. He abandoned and neglected Kaitlyn as is evidenced by uncontested findings. He did not complete any domestic violence counseling or treatment to address documented domestic violence. Although he started attending IMPACT after the Petition was filed, he was terminated from the program for failure to attend.

¶ 24 A DSS supervisor testified Respondent's case plan was discussed with him on 23 January 2019 and 28 January 2019 and was documented in DSS' file. Respondent had visited Kaitlyn in January 2019 and February 2019, but provided no drug screens, no proof of housing or employment, and had failed to attend drug treatment or domestic violence classes through the end of 2019.

¶ 25 Respondent did not send gifts or cards to Kaitlyn, did not ask for visits with his child after February 2019, did not follow up to inquire about Kaitlyn, and failed to acknowledge or communicate with her on her birthday or holidays through the end of 2019. The supervisor also testified she arrived at a DSS visit and Mother had visible marks around her neck and ear, which she asserted came from Respondent attacking her.

¶ 26 The trial court properly found and concluded Respondent has willfully left Kaitlyn in foster care or out of home placement and failed to satisfy the court of making any "reasonable progress under the circumstances." N.C. Gen. Stat. § 7B-1111(a)(2). Respondent's arguments are without merit. The trial court's conclusion on this ground is affirmed.

## VI. Conclusion

¶ 27 The findings of fact and conclusions thereon in the order terminating Respondent's parental rights are supported by clear, cogent and convincing evidence in the record. Respondent was provided many opportunities to show his parental responsibility and abilities to care for Kaitlyn and squandered them. We affirm the trial court's conclusions to terminate Respondent's parental rights to Kaitlyn on each of the grounds asserted in the Petition as reviewed above. *It is so ordered.*

AFFIRMED.

Judges CARPENTER and JACKSON concur.

Report per Rule 30(e).