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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-427

No. COA21-782

Filed 21 June 2022

Henderson County, No. 20JT176

IN RE: V.S.D.

Appeal by Respondent-Father from order entered on 13 September 2021 by Judge Gene Johnson in Henderson County District Court. Heard in the Court of Appeals 10 May 2022.

Speaks Law Firm, PC, by Garron T. Michael, for Respondent-Appellant.

F.B. Jackson & Associates Law Firm, PLLC, by James Lamar Palmer, for Petitioner-Appellee.

CARPENTER, Judge.

¶ 1 Respondent-Father appeals from an order terminating his parental rights as to his minor child, Sam.¹ On appeal, Respondent-Father challenges the grounds the trial court found existed to support the termination of his parental rights and argues the trial court abused its discretion in concluding the termination of Respondent-

¹ A pseudonym has been used to protect the identity of the minor child.

Father's rights was in the best interest of Sam. After careful review, we affirm the order terminating Respondent-Father's parental rights.

I. Factual & Procedural Background

¶ 2

On 18 December 2020, Petitioner-Mother filed a petition to terminate the parental rights of Respondent-Father as to Sam. On 29 April 2021, Respondent-Father filed an answer denying the alleged grounds for termination of his parental rights. A termination hearing was held on 3 September 2021, and a formal written order terminating the parental rights of Respondent-Father was entered on 13 September 2021. On 6 October 2021, Respondent-Father timely filed a written notice of appeal from the trial court's termination order.

¶ 3

The record and testimony tend to show the following: Sam was born in February 2017 in Henderson County where Respondent-Father and Petitioner-Mother resided. Though the couple never married, they resided together beginning in the summer of 2016. Sam is the couple's only child. Testimony at trial tends to show that when Petitioner-Mother was pregnant with Sam, Petitioner-Mother was "thrown," was "pushed down the stairs," had items "thrown" at her, was "locked out of the house in the cold," and was choked by Respondent-Father. Testimony was also given to the effect that Respondent-Father had substance abuse issues and was uninvolved in the child's care while the parents were cohabitating. Petitioner-Mother, the maternal grandfather, the paternal grandmother, and other members of

Respondent-Father's family came together to make an appointment for Respondent-Father to have an "intake counseling appointment to get into some drug rehabilitation counseling"; however, Respondent-Father did not follow up with treatment.

¶ 4 Petitioner-Mother testified that when Sam was approximately seven months old, Respondent-Father poured water on her head, threw a bottle at her, and was "shoving [her] around," and that he would abuse and torment the couple's cats, particularly when he was under the influence of drugs. Petitioner-Mother charged Respondent-Father with assault, filed for a domestic violence protective order, and filed a complaint for custody. Respondent-Father entered into a permanent consent custody order wherein he had once a week, supervised visits with Sam. During this same time, the assault charges filed by Petitioner-Mother were dismissed. While the protective order was upheld, Petitioner-Mother and Respondent-Father continued to live together, on and off, in Henderson County. Petitioner-Mother testified Respondent-Father offered "to sign his parental rights over for money."

¶ 5 In January 2018, Petitioner-Mother was preparing to start a new job as a legal assistant at an attorney's office in Hendersonville. Petitioner-Mother testified Respondent-Father falsified a police report stating Petitioner-Mother struck him on his arm, causing the sheriff's department to arrest Petitioner-Mother. As a result, Petitioner-Mother was forced to spend the night in jail, and consequently missed the

first day of her new job. Petitioner-Mother testified Respondent-Father told Petitioner-Mother this was an attempt at “revenge.” Upon Petitioner-Mother’s release from jail, she returned home to find the couple’s home “trashed,” with the couch flipped, car keys missing, items stolen, and her makeup thrown across the yard. Respondent-Father admitted to Petitioner-Mother via phone that he was responsible for the incident.

¶ 6

Shortly after Petitioner-Mother’s arrest, Respondent-Father permanently moved out of the couple’s residence and began residing full-time in Tennessee where his family lived. After moving to Tennessee, Respondent-Father attended three visitations with Sam in January and February 2018, including one on Sam’s birthday. Visits were supervised by Sam’s maternal grandfather, a retired law enforcement officer. Another single visit occurred in the year 2019, wherein Sam stayed with his paternal grandmother. During the year 2020, Respondent-Father attended two visitations, supervised by the maternal grandfather. No child support order was in place, and although Respondent-Father maintained employment when he was not incarcerated, Respondent-Father provided a total of \$150.00 in support from January 2019 forward. In October 2020, Respondent-Father informed Petitioner-Mother he was “not . . . looking for a visit and to disregard [the paternal grandmother’s] request[]” to arrange a visit.

¶ 7

In December 2020, Respondent-Father was arrested following a stabbing in Tennessee. After the arrest, Petitioner-Mother formally filed to have Respondent-Father's parental rights to Sam terminated. Respondent-Father was incarcerated in Tennessee from 5 December 2020 until 1 August 2021. During his incarceration, Respondent-Father did not make any calls or send any letters to Sam or Petitioner-Mother. Nevertheless, the paternal grandmother maintained contact with Petitioner-Mother and Sam by sending gifts and attending visitations.

¶ 8

The hearing on the termination of Respondent-Father's parental rights to Sam was held on 3 September 2021. Testimony was presented from Petitioner-Mother, the maternal grandfather, Respondent-Father, and the paternal grandmother. Following the presentation of witnesses and evidence, the trial court announced its oral order finding that grounds existed to terminate Respondent-Father's parental rights as to Sam pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) and (7).

¶ 9

On disposition, the trial court heard additional testimony from Petitioner-Mother and the appointed Guardian *ad Litem* ("GAL"), and received the GAL disposition report into evidence. In both her testimony and her report, the GAL relayed, based on her investigation, the termination of Respondent-Father's parental rights was not in Sam's best interest. At the conclusion of the presentation of evidence on disposition, the trial court announced its oral order concluding that it was in Sam's best interest for Respondent-Father's parental rights to be terminated.

II. Jurisdiction

¶ 10 This Court has jurisdiction to address Respondent-Father’s appeal from the order pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Issues

¶ 11 The issues before this Court are whether: (1) the trial court erred in concluding Respondent-Father willfully abandoned Sam pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2021); (2) the trial court erred in concluding grounds existed to terminate Respondent-Father’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (2021); and (3) the trial court abused its discretion in concluding it was in Sam’s best interest to terminate Respondent-Father’s parental rights.

IV. Standard of Review

¶ 12 “Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020); *see also* N.C. Gen. Stat. § 7B-1110(a) (2021). “[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019); *see also* N.C. Gen. Stat. § 7B-1110(a). Thus, “if this Court upholds the trial court’s order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds.” *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

¶ 13 After finding at least one ground exists to support the termination in the adjudicatory stage, the trial court proceeds to the dispositional stage. N.C. Gen. Stat. § 7B-1110(a). In determining “whether terminating the parent’s rights is in the juvenile’s best interest” in the dispositional stage, the trial court considers the following factors and makes written findings on the criteria:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)–(6).

¶ 14 “We review a trial court’s adjudication that a ground exists to terminate parental rights under [N.C. Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14 (citations and quotation marks omitted). Moreover, “[f]indings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal. . . . [W]e review only those findings necessary to support the trial court’s

determination that grounds existed to terminate [the] respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citations omitted). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citations omitted and emphasis added).

¶ 15 "The trial court's dispositional findings are binding . . . if they are supported by any competent evidence or if not specifically contested on appeal." *In re B.E.*, 375 N.C. 730, 745, 851 S.E.2d 307, 317 (2020) (citation and quotation marks omitted). "The trial court's assessment of a juvenile's best interest at the dispositional stage is reviewed only for abuse of discretion." *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797. "Under this standard, we defer to the trial court's decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 100, 839 S.E.2d at 800 (citation and quotation marks omitted).

IV. Analysis

A. Willful Abandonment

¶ 16 In the context of a termination of parental rights, the critical period for a finding of abandonment of a juvenile is at least six consecutive months immediately preceding the filing of a petition or motion to terminate. N.C. Gen. Stat. § 7B-1111(a)(7); *In re Young*, 346 N.C. 244, 252, 485 S.E.2d 612, 617 (1997). "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.” *Id.* at 251, 485 S.E.2d at 617 (citation omitted). “[A]lthough the trial court may consider a parent’s conduct outside the six-month window in evaluating a parent’s credibility and intentions, the ‘determinative’ period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition.” *In re N.D.A.*, 373 N.C. 71, 77, 833 S.E.2d 768, 773 (2019) (citation omitted).

¶ 17 Petitioner-Mother filed a petition to terminate parental rights on 18 December 2020; the determinative six-month window therefore began on 18 June 2020. Respondent-Father takes issue with findings of fact 26, 57, and 58, contending the trial court’s termination order contains findings of fact not properly supported by the evidence presented. These findings effectively state Respondent-Father made little to no effort to exercise visitations or have contact with Sam throughout his life. Respondent-Father contends the evidence shows he attended visits in 2018, 2019, and 2020; however, he could not attend visitations every weekend due to the “logistics involved in visitations,” including the distance between Henderson County, where Sam and Petitioner-Mother lived, and Tennessee, where Respondent-Father lived. Evidence presented at trial tended to show Respondent-Father went very long periods of time without making any effort to see or even contact Sam, and Respondent-Father did not make any effort to attend a vast majority of the visitations available to him. Though Respondent-Father’s driver’s license was revoked after his

second DUI conviction in January 2020, Respondent-Father testified his father was capable of driving him to visitations in the past. Further, the paternal grandmother testified she was “willing to drive [Respondent-Father] . . . over for visits . . . every week” and that she tried “to set [visits] up as often as [she] could.” In any event, distance did not prevent Respondent-Father from attempting to make contact with Sam via phone or mail, and Respondent-Father does not contest the trial court’s findings Petitioner-Mother’s phone number and mailing address have remained known to Respondent-Father throughout the relevant time period.

¶ 18 For the applicable six-month period from 18 June to 18 December 2020, twenty-six weekly visitations were possible according to the 2017 consent order, and Respondent-Father was only incarcerated for a few of the potential December 2020 visits. It is undisputed that no visitations occurred during the six-month period, and no calls or letters were sent from Respondent-Father. While a August 2020 visit was scheduled and canceled by Petitioner-Mother due to her attendance at a funeral in New Bern, North Carolina, Respondent-Father did not attempt to make up lost time for this visit, and specifically told Petitioner-Mother in October 2020 to disregard the request for a visit made by the paternal grandmother.

¶ 19 Respondent-Father also takes issue with finding of fact 64, which states in relevant part, “there were no . . . supervised visits until April and May 2020.” Because the applicable six-month period was from 18 June to 18 December 2020, whether

clear, cogent, and convincing evidence existed in the record to support this finding would have no bearing on Respondent-Father's actions for purposes of the finding he willfully abandoned Sam. *See In re A.M.*, at 220, 2021-NCSC-42, ¶ 14.

¶ 20 Lastly, Respondent-Father disputes the basis for the trial court's findings of fact 29 and 43, contending they "contain portions indicating . . . [Respondent-Father] made no efforts to call [Petitioner-Mother] or Sam while he was incarcerated." Respondent-Father asserts there was "no evidence presented that [Respondent-Father] could in fact place long distance or out of state calls while he was incarcerated in . . . Tennessee." However, Respondent-Father both (1) admits he has not tried to send mail to Sam during the applicable period, and (2) does not contend he could not write letters to Petitioner-Mother or to Sam during his incarceration.

¶ 21 Respondent-Father presents nothing more in his brief to refute his willful abandonment of Sam than a showing of present interest. "A delinquent parent may not dissipate at will the legal effects of his abandonment by merely expressing a desire for the return of the abandoned juvenile." *In re C.J.H.*, 240 N.C. App. 489, 504, 772 S.E.2d 82, 92 (2015). Based on testimony presented at trial, clear, cogent, and convincing evidence existed to support a basis for all findings of fact challenged by Respondent-Father, which in turn support the conclusion Respondent-Father willfully abandoned Sam. Having affirmed the trial court's order with respect to willful abandonment, *See* N.C. Gen. Stat. § 7B-1111(a)(7) (2021), we need not review

Respondent-Father's subsequent argument regarding N.C. Gen. Stat. § 7B-1111(a)(1) (2021). *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71.

B. Sam's Best Interest

¶ 22 Next, Respondent-Father contends the trial court abused its discretion in concluding it was in Sam's best interest to terminate Respondent-Father's parental rights. An abuse of discretion results where the trial court's ruling is "manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re A.R.A.*, 373 N.C. 190, 191, 835 S.E.2d 417, 419 (2019).

¶ 23 The trial court made findings of fact addressing the factors set forth in N.C. Gen. Stat. § 7B-1110(a); Respondent-Father has not challenged these findings so they are binding on appeal. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. Petitioner-Mother has married, and the trial court found the relationship is "stable and productive." Petitioner-Mother's husband has a "good bond" with Sam, taught Sam to ride a bike, is referred to as "dad" by Sam, and intends to file a step-parent adoption for Sam. The trial court also made finding of fact 81, stating "a reintroduction of [Respondent-Father] into [Sam's] life would be very confusing and detrimental to [Sam's] emotional well being." The trial court also considered the relationship between Sam and his paternal grandmother but determined the bond between Sam and Petitioner-Mother's husband outweighed his relationship with the paternal grandmother. As of the September 2021 hearing, Respondent-Father had not seen

Sam since May 2020; at such time, Sam was four years old. The trial court properly considered the appropriate factors as to the child’s best interests, therefore, “the trial court’s conclusion that termination was in the child’s best interests was neither arbitrary nor manifestly unsupported by reason.” *See In re Z.A.M.*, 374 N.C. at 100, 839 S.E.2d at 800.

¶ 24 The trial court did not, therefore, abuse its discretion in concluding it was in Sam’s best interest to terminate Respondent-Father’s parental rights.

VI. Conclusion

¶ 25 The trial court’s relevant findings of fact are supported by clear, cogent, and convincing evidence, and those findings in turn support the conclusions of law that: (1) Respondent-Father willfully abandoned Sam, and (2) it was in Sam’s best interest to terminate Respondent-Father’s parental rights. Accordingly, we affirm the order terminating Respondent-Father’s parental rights as to Sam.

AFFIRMED.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).