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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-534

No. COA22-159

Filed 2 August 2022

Onslow County, No. 21 JT 64

IN THE MATTER OF: D.E.G.

Appeal by respondent-father from judgment entered 16 November 2021 by Judge Robert Gilmore in Onslow County District Court. Heard in the Court of Appeals 12 July 2022.

W. Michael Spivey for appellant-respondent-father.

No brief filed for appellee-petitioner-mother.

No brief filed for Guardian ad Litem.

ARROWOOD, Judge.

¶ 1 Respondent-father appeals from the trial court's judgment terminating his parental rights to his son, David.[1] Counsel for respondent-father has filed a no-merit brief under Rule 3.1(e) of the North Carolina Rules of Appellate Procedure. For the

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading.

following reasons, we affirm the trial court's judgment.

I. Background

¶ 2 On 13 April 2021, petitioner-mother filed a petition to terminate respondent-father's parental rights to David, alleging neglect, failure to pay child support pursuant to a court order for more than one year, and willful abandonment as grounds for termination.

¶ 3 The petition alleged that David was born in California on 13 March 2009 during the parents' marriage, was a resident of Onslow County, North Carolina, and had been a resident in North Carolina for more than six months. Petitioner-mother alleged that a California custody and support order, registered in Onslow County, required respondent-father to pay monthly child support to petitioner-mother in the amount of $400.00. She alleged that respondent-father had not paid child support since 2018 and had not had any contact with David since 2012. Respondent-father's answer admitted these allegations.

¶ 4 Respondent-father was served with the petition on 22 April 2021. Counsel was appointed for respondent-father and a Guardian ad Litem was appointed for David on 3 September 2021. Respondent-father also filed a verified Answer on 3 September 2021.

¶ 5 The trial court held a hearing on the petition on 5 November 2021. At the hearing, petitioner-mother testified that she was married to respondent-father for

approximately sixteen months before they separated as a result of domestic violence, and that she remained in California from 2009 until 2013. Petitioner-mother testified that respondent-father periodically saw David until 2012, but has had no contact with his son since then.

¶ 6 Petitioner-mother remarried in 2013 and relocated to North Carolina, where she lived with her husband and David until moving back to California in 2014. Petitioner-mother stated that respondent-father briefly made contact and requested visitation with David, to which petitioner-mother agreed, but respondent-father failed to appear because he was arrested and jailed before the visit.

¶ 7 Petitioner-mother, her husband, and David moved to New Jersey in 2015. Petitioner-mother testified that respondent-father contacted her in 2016 to "let [her] know that he had been run over by a tractor." Respondent-father indicated that he was pursuing a worker's compensation claim that would go towards child support. Petitioner-mother stated that respondent-father did not ask about David or seek contact with him.

¶ 8 The family moved back to North Carolina in 2017. Respondent-father contacted petitioner-mother in 2018 to tell her she would be receiving a child support payment. Petitioner-mother did not hear from respondent-father again until 2019 when he left a voicemail saying his hand had been amputated. Petitioner-mother testified and offered documentary evidence that respondent-father had failed to pay

any child support since 2018; in 2020, respondent-father's stimulus payment was seized and applied to his child support obligation, but no other payments or credits were made after the seized stimulus payment.

¶ 9 Respondent-father did not present any evidence or testimony during the "grounds" portion of the hearing. The trial court found by clear and convincing evidence that petitioner-mother had proven neglect, failure to pay support under a support order for one year next preceding the petition's filing, and willful abandonment.

¶ 10 The trial court next considered David's best interests. Petitioner-mother testified that she and her current husband had been married since 2013. Petitioner-mother stated that she had two children with her husband and another child from a previous relationship. Petitioner-mother testified that her husband had "[a] really close relationship" with David and wanted to adopt him. Her husband was employed as a Gunnery Sergeant in the United States Marine Corps with fourteen years of service. Petitioner-mother stated that she and her husband had a stable home for David to live in, and that David was "doing really good" at his middle school.

¶ 11 Respondent-father did not present any evidence or testimony as to best interests. The trial court found that David was "at a young enough age where a termination of parental rights and adoption will still be beneficial to the child." The trial court found that adoption was "almost a certainty" and that termination would

help achieve the permanency for the child through adoption, "[t]he bond between the child and [respondent-father] being one that is almost nonexistent."

¶ 12 Following the hearing, the trial court entered an order summarizing its oral findings. The trial court concluded that respondent-father neglected David by not providing proper care, supervision, or discipline since 2012; that respondent-father had failed without justification to pay for child support pursuant to a judicial decree; and that respondent-father had willfully abandoned David for at least six months preceding the filing of the petition. Accordingly, the trial court concluded that termination would serve David's best interests and terminated respondent-father's parental rights to David.

¶ 13 Respondent-father filed notice of appeal on 15 December 2021.

II. Discussion

¶ 14 Following a "conscientious and thorough review of the record on appeal and conclud[ing] that the record contains no issue of merit on which to base an argument for relief[,]" respondent-father's attorney has filed a no-merit brief pursuant to Rule 3.1(e), presenting two issues considered during his review: whether the findings of fact are supported by competent evidence and support its conclusions of law, and whether the trial court abused its discretion in terminating parental rights.

¶ 15 Following a trial court's determination that grounds for termination exist, "[w]e review a trial court's adjudication under N.C.G.S. § 7B-1109 'to determine

whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.' " *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019) (citation omitted). "The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion." *Id.* (citation omitted).

¶ 16 The trial court found that respondent-father had not had contact with David since 2012 and shared "no parental bond" with David. The trial court also found that respondent-father had made sporadic child support payments since 2010 with multiple years of non-payment, and was currently in arrears in the amount of $60,456.19. These findings were supported by petitioner-mother's testimony and documentary evidence presented at the hearing. Further, the findings support the trial court's conclusions that respondent-father had neglected David since 2012 and willfully abandoned David for at least six months preceding the filing of the petition. The trial court did not err in its findings of fact or conclusions of law.

¶ 17 At the dispositional stage, the trial court is required to consider the following factors in determining whether terminating the parent's rights is in the juvenile's best interest:

> (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) (2021). Here, the trial court found that, given David's age and circumstances, adoption was "almost a certainty" and that termination of parental rights would help achieve permanence for David. The trial court further found that respondent-father had no contact with David since 2012 and shared "no parental bond" with him, contrasted by the "good, strong and loving relationship" with petitioner-mother's husband. The trial court made the necessary findings of fact in concluding that terminating respondent-father's parental rights was in David's best interest, and accordingly did not abuse its discretion.

III. Conclusion

¶ 18 For the foregoing reasons, we affirm the trial court's judgment and order.

AFFIRMED.

Chief Judge STROUD and Judge COLLINS concur.

Report per Rule 30(e).