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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-663

No. COA22-23

Filed 4 October 2022

Surry County, Nos. 20 JT 122 & 20 JT 123

IN THE MATTER OF: M.E.M. & N.C.M.

Appeal by Respondent-Father from order entered 15 October 2021 by Judge Spencer G. Key, Jr. in Surry County District Court. Heard in the Court of Appeals 14 July 2022.

The Law Office of Partin & Cheek, PLLC, by Richard Blake Cheek, for Petitioner-Appellee.

No brief filed by guardian ad litem.

Kimberly Connor Benton, for Respondent-Father.

DILLON, Judge.

¶ 1 Respondent-Father (“Father”) appeals from an order terminating his parental rights to M.E.M. and N.C.M.¹ We affirm.

¹Pseudonyms. See N.C. R. App. P. 42(b)(1).

I. Background

¶ 2

On 24 September 2020, Petitioner-Mother (“Mother”) filed a petition to terminate the parental rights of Father based on willful abandonment and neglect pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7). On 15 October 2021, after a hearing on the matter, the trial court entered its Order terminating Father’s parental rights. Father timely appealed.

II. Analysis

¶ 3

On appeal, Father challenges both the trial court’s finding of neglect and of willful abandonment. Because N.C. Gen. Stat. § 7B-1111 states that a finding of only one enumerated ground is necessary to support a termination of parental rights, we need not address the trial court’s finding of neglect. *See In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019). Thus, we exclusively address the issue of willful abandonment.

¶ 4

We review a trial court’s adjudication under N.C. Gen. Stat. § 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 Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984) (citation 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).

¶ 5

A trial court may terminate a parent’s parental rights when “[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 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) (citation omitted). “Wilful intent is an integral part of abandonment and is a question of fact to be determined from the evidence.” *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962).

¶ 6

Here, the relevant six-month period is 24 March 2020 to 24 September 2020. Father was incarcerated approximately half of this time. Our Supreme Court has held that “[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision.” *In re M.A.W.*, 370 N.C. 149, 153, 804 S.E.2d 513, 517 (2017) (citations omitted). Although incarceration presents an impediment to displaying familial affection, “a parent *will not be excused from showing interest in [the] child's welfare by whatever means available.*” *In re C.B.C.*, 373 at 20, 832 S.E.2d at 695 (emphasis added).

¶ 7

Father argues that he did attempt to show an interest in the children’s welfare, challenging two findings of fact and two conclusions of law in the Order. We address each in turn.

A. Findings of Fact

¶ 8 Father first challenges the finding that

20. Upon initiation of this matter, Father had never reached out to Mother to ask about the status and well being of the minor children.

We conclude, however, that this finding is supported by the uncontested factual findings, which “are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). Father admits that he contacted Mother in August of 2020 through Facebook and did not ask about the children. Outside of this communication, the two had no contact with each other from November 2019 until the hearing date of this matter, which was held on 16 June 2021. This period more than covers the statutory six-month time relevant here.

¶ 9 Next, Father challenges the finding that

23. Father has never contacted Mother to ask about the minor children despite having the means to do so.

As stated above, the uncontested findings support the fact that Father never contacted Mother to inquire about the children. Thus, the only question is whether he had the capability to do so; that is, whether his conduct was willful.

¶ 10 We conclude that the evidence indicates that Father did have the ability to contact Mother and inquire as to the children’s well-being. During the adjudication hearing, Father claims that the only method of communication he had with Mother

during their relationship—including dating, marriage, having children, and divorce—was Facebook. It seems unlikely this is true.

¶ 11 Assuming *arguendo* that Father did not have Mother’s cell phone number, he *did* however have the capability to contact her through social media. Instead of asking about the children, working to mend the relationship, or scheduling visitation, he used this method of communication to harass Mother and her new fiancé, stating on one occasion that

If you think I will ever leave my youngins alone by choice,
you just keep spreading them legs for that fat nasty SOB.
I'll be there no matter what. A two-bit two dollar . . . to fuck
you. **(TP 53)**

When asked why he did not inquire as to the children, Father stated that Mother blocked him from messaging her. However, it is uncontested that Mother never blocked Father from calling her, texting her, or messaging her on social media. Thus, we find Father’s challenge unconvincing.

B. Conclusions of Law

¶ 12 Father also challenges the trial court’s conclusions that he (1) abandoned his parental obligations and (2) deserted his rights as a parent. We conclude that the evidence supports the trial court’s factual findings, which, in turn, support its conclusion of termination of parental rights based on willful abandonment. See *In re Montgomery*, 311 at 111, 316 S.E.2d at 253.

¶ 13 As discussed above, the trial court’s factual findings show that Father had the ability to establish contact and work towards building a relationship with the children, yet he failed to do so. Our Supreme Court considered a similar factual scenario in a case two years ago and determined that willful abandonment existed due to the respondent-father’s prolonged lack of contact with the children, and, with one exception, failure to maintain contact with the mother. *In re: A.G.D.*, 374 N.C. 317, 323-24, 841 S.E.2d 238, 242-43 (2020) (wherein the court reviewed an adjudication of willful abandonment where the evidence showed that the respondent-father was incarcerated, divorced from the children's mother, and subject to a court order not to contact his children). Thus, we conclude there exists “clear, cogent, and convincing evidence” to support the trial court’s conclusion that Father abandoned his parental obligations, deserting his rights as a parent. *In re E.H.P.*, 372 at 392, 831 S.E.2d at 52.

III. Conclusion

¶ 14 We agree with the trial court’s conclusion that Father’s conduct, as contained in the findings of fact, manifests a “willful determination to forego all parental duties” and thus meets the statutory requirement for willful abandonment. *In re Young*, 346 at 251, 485 S.E.2d at 617. Therefore, we affirm the trial court’s adjudication pursuant to N.C. Gen. Stat. § 7B-1111(a)(7).

AFFIRMED.

IN RE: M.E.M. & N.C.M.

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Opinion of the Court

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).