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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-480

Filed 04 April 2023

Rutherford County, No. 21 JT 52

IN RE: A.R.C.,

MINOR CHILD

Appeal by respondent-father from order entered 11 March 2022 by Judge Corey J. MacKinnon in Rutherford County District Court. Heard in the Court of Appeals 21 February 2023.

King Law Offices, PLLC, by Patrick K. Bryan, for petitioners-appellees.

Sydney Batch for respondent-appellant father.

ZACHARY, Judge.

Respondent-Father appeals from the trial court's order terminating his parental rights to "Anna,"¹ one of his minor children. After careful review, we vacate the trial court's order terminating Respondent-Father's parental rights, and remand for further proceedings.

I. Background

¹ We use the pseudonym adopted by the parties for ease of reading and to protect the juvenile's identity.

This case arises out of a family environment that, as set forth in greater detail below, the trial court described as “full of pettiness, turmoil and drama.” Respondent-Father is the biological father of nine children by various mothers. Anna is one of his children.

In October 2014, the Gaston County DSS became involved in Respondents’ home, due to issues including Respondents’ substance abuse, mental health concerns, and allegations of self-harm. As a result, the three children who were living with Respondents at that time—Anna, Respondents’ biological daughter, as well as Respondent-Father’s two-year-old twin sons from a previous relationship—were removed from Respondents’ home. The twins were placed in foster care; Respondent-Father arranged for his sister Heather, whose own child was approximately Anna’s age, to receive Anna in a kinship placement. Gaston County DSS did not assume custody of Anna or file a juvenile petition in her case.

In May or June of 2015, after Heather became pregnant with her second child, she informed Gaston County DSS that Anna could no longer remain in her care. With the assistance of Gaston County DSS, it was agreed that Anna would be transferred from Heather’s care and placed instead with Petitioners Robert and Lesley Grigg, Heather’s brother- and sister-in-law. Respondent-Father signed “Authority to Consent to Medical Treatment” and “Authority to Enroll in School/Remedial Care” documents in favor of Petitioners. Anna has remained in Petitioners’ custody since July 2015.

Almost six years later, on 12 April 2021, Petitioners filed a verified petition to terminate Respondents' parental rights to Anna. Petitioners alleged that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7) (2021).

Respondent-Mother filed her answer on 2 July 2021, and Respondent-Father filed his answer on 27 August 2021. Each Respondent generally denied Petitioners' claims and opposed the termination of their parental rights. Meanwhile, on 16 July 2021, a guardian *ad litem* ("GAL") was appointed to represent Anna.

The matter came on for hearing in Rutherford County District Court on 7 and 25 February 2022. On 11 March 2022, the trial court entered its judgment and order terminating Respondents' parental rights to Anna. Pertinent to this appeal, the trial court determined that Respondent-Father had (1) "willfully abandoned [Anna] for a period exceeding six months preceding the filing of the petition," and (2) "neglected [Anna] by willful abandonment[.]" and therefore, concluded that grounds for termination existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) and (1), respectively. In support of its adjudication of these grounds for termination, the trial court addressed Respondent-Father's lack of contact with Anna during her nearly seven-year placement with Petitioners and his claim that Heather and Petitioners prevented him from having any contact with Anna:

14. During the first year [that] Petitioners had [Anna], Respondent[-]Father set up 2 or 3 visitation appointments directly with . . . Petitioners. These visits were to occur at Chick-Fil-A, or other public locations.

15. . . . Petitioners would take [Anna] to the location, wait one to two hours, and . . . Respondent[-]Father would not show up.

16. This caused emotional breakdowns for [Anna]. Heather would have to come assist . . . Petitioners in calming [Anna] down and consoling her after the disappointment.

17. Due to the severe emotional response of [Anna] following the last missed visitation appointment, Petitioner Robert Grigg informed Respondent[-]Father that he would need to coordinate the visitations through DSS going forward.

18. From that day until the [f]iling of the petition, and even until current day, neither Respondent[-]Father nor Respondent[-]Mother have made any direct contact with . . . Petitioners.

19. From that day until the [f]iling of the petition, and even until current day, neither Respondent[-]Father nor Respondent[-]Mother have made a direct request to . . . Petitioners for visitation.

20. During the time [that] Petitioners have had [Anna], neither . . . Respondent[-]Father nor Respondent[-]Mother has spoken with or seen [Anna].

21. [Anna] has lived with . . . [P]etitioners since 2015. [Anna] refers to [P]etitioners as “Mom” and “Dad.” [Anna] expresses love for . . . Petitioners and feels loved by both Petitioners. [Anna] enjoys hunting and fishing with Petitioner Robert Grigg and shopping with Petitioner Lesley Grigg.

22. Petitioner Robert appears to be the primary caretaker for [Anna] due to work schedules. Petitioner Lesley is a nurse on a COVID unit. According to [Anna], Petitioner Lesley works a lot, but when she is not working is involved with [her].

23. [Anna] has a strong relationship with Petitioner

Robert's parents and calls them her grandparents. They are retired, but maintain a farm, where [Anna] helps tend to the animals, which she greatly enjoys.

. . . .

27. Respondent[-]Father has ongoing and sometimes intermittent feuds with members of his family. [Respondent-Father's sister] Melinda went four years without speaking to him and just reestablished [a] relationship around September 2021, after the filing of this petition. Respondent[-]Father went a period of time without speaking to Summer, his daughter, for unknown reasons, but has reestablished that relationship as well. Respondent[-]Father does not have a good relationship with Heather currently.

28. Respondent[-]Father "blocks" members on social media, including through his 7 various Facebook profiles. He often "blocks" telephone numbers of those he does not want to have contact with. Respondent[-]Father has changed phone numbers, or at least phones, on several occasions usually following his release from incarceration. Heather has engaged in "blocking" Respondent[-]Father at various times as well.

29. This Court finds [Respondent-Father's] family (including Heather) to be an environment full of pettiness, turmoil and drama. Consistent periods occur where they block or don't speak to one another. They make family members pick sides between "team [Respondent-Father]" and "team Heather." Jealousy exists of the life [Anna] now lives in compared to their own children. They are using members against one another, and allowing Heather, who is not placement [sic] of [Anna], to dictate who can have a relationship with [Anna].

30. Respondent[-]Father has not been incarcerated since an 8-month stint in 2017. Respondent[-]Father claims to be clean of all illegal drugs since that time. The court was presented with no evidence supporting that claim other than testimony of his family members and himself.

31. Respondent[-]Father, for the nearly seven years [that Anna] has been with . . . [P]etitioners, has never sent any birthday or Christmas gifts to her. Respondent[-]Father never wrote any letters or sent any cards. Although he took some clothing and miscellaneous items to Heather, while she had placement of [Anna], [he] has never taken any similar items to . . . Petitioners.

32. [Respondent-]Father described one time in 2020 he requested his daughter Summer make a drink tumbler with [Anna]'s initials on it as a gift. The gift was never delivered. He requested, through Melinda, to have Heather come retrieve the item and take it to the Griggs. Heather never retrieved the item. No other action was taken in order to deliver the item to [Anna].

33. In January of 2022, well after the filing of the petition, Respondent[-]Father made a generic Facebook post wishing his daughter [Anna] a Happy Birthday. The Facebook post was shown to [Anna] by Heather, after it was sent by Melinda. Respondent[-]Father took no action to ensure [Anna] saw the post.

34. Petitioners have had the same telephone numbers for 25 years and have maintained the same residence since placement of [Anna]. Respondent[-]Father says that he lost their number during one of the incarceration periods, didn't know their names despite them being on the consent form and the Grigg[s] having consistent contact with his various other family members, and unable to "Google" their names to possibly retrieve an address or telephone number.

35. [Respondent-]Father has paid child support since approximately 2017 pursuant to court order. [Respondent-]Father questioned child support case workers about visitation rights at the time of establishment and was advised to seek counsel. He did not seek visitation or custody at any point after receiving that guidance until filing a complaint in January 2022.

36. [Anna] has a Facebook account, which she has not

blocked . . . Respondent[-]Father from and has not received any messages from him either.

37. Respondent[-]Father claims to have sent Petitioner Lesley Grigg a Facebook “Friend request” at some point, although it is unclear what year this took place. The request was not accepted, but unknown if it was seen by Petitioners. No further messages were sent to Petitioners by Respondent[-]Father.

38. Respondent[-]Father further testified that he has never directly requested Heather set up a visit or otherwise provide contact information for . . . Petitioners, due to their severed relationship and “blocking” of Heather from all contact with him. Respondent[-]Father claims to have asked his mother to try and facilitate those visits through Heather. Respondent[-]Father could not testify as to how many times, or when, he asked his mother to set up these visits. However, there is no evidence that Heather was told about these attempts, and absolutely no evidence that . . . Petitioners knew about these attempts or that they stopped/interfered with these attempts.

39. There is no evidence that Petitioners have taken any action to prevent Respondents from knowing the location of [Anna], reaching [Anna] by telephone or mail, or visiting with [Anna]. Any complaint by . . . Respondents of obstruction appears to be by Heather.

40. In January 2021 [Anna] was staying at Heather’s house when Heather’s brother-in-law, also the brother of Petitioner Lesley Grigg, began saying sexually inappropriate things to [Anna] and Heather’s minor child. At one point, the subject touched the leg of Heather’s minor child and became overly aggressive with Heather. Heather’s minor child had to seek counseling and be placed on what is described as “suicide watch.” Heather informed [Petitioners] who picked up [Anna] from Heather’s house. [Anna] was not touched but was upset by what was said to her. Unsatisfied with . . . Petitioners['] response to the incident, hoping for something more drastic, Heather

contacted Respondent[-]Father and tells him “Somebody is messing with your little girl.” Heather, mad and upset with the situation, was hoping Respondent[-]Father would take matters into his own hands.

41. Respondent[-]Father took no action after finding out this information. Respondent[-]Father didn’t contact Heather, . . . Petitioners, Law Enforcement, or the Department of Social Services. Furthermore, he didn’t attempt to retrieve [Anna] from Petitioners or file a complaint for custody.

42. Respondent[-]Father did not file any complaint for custody or visitation until January 2022, nearly 9 months after the filing of this petition.

43. [Anna] expressed to Petitioner[s] her desire to be adopted on at least 3 different occasions. As a result, Petitioners, through Heather, attempted to contact Respondent[-]Father in January 2021 about relinquishing his rights so that [Anna] could be adopted. . . . Respondent[-]Father would not agree at that time.

44. Even in light of knowing . . . Petitioner[s’] desire for a relinquishment and adoption, Respondents still did not take any steps in trying to reestablish contact with [Anna] or take any legal action to reestablish custody.

. . . .

46. Petitioner [Robert] has not done anything to hide or otherwise interfere with Respondent[-]Father’s ability to visit and contact [Anna]. Petitioner [Robert] testified that he would encourage some contact with Respondent[-]Father if it were safe to do so. Petitioner [Robert] does not discuss . . . Respondent[-]Father or Respondent[-]Mother with [Anna]. The court does find that Heather may have those conversations in . . . Petitioner[s’] absence but not at the encouragement of Petitioners. Petitioners have condoned contact with other members of Respondent[-]Father’s family throughout the 7-year period of placement.

. . . .

49. Respondent[-]Father has 9 children, some with different mothers, ranging from 27 years of age to the youngest being 2 years old with his current [f]iancé. The twin boys, that were removed at the [same] time [as Anna], are now 8 years old. Respondent[-]Father does have some contact with those children and their adoptive parents.

50. Respondent[-]Father does have stable employment, has worked at the same employer since the children were removed from the home despite substance abuse issues and incarceration. Respondent[-]Father currently lives in a camper/travel trailer, with two bedrooms, adjacent to his brother and on his brother's property. The home is shared by his fiancé, their two-year-old child, his daughter and at least one other minor child, a grandchild.

51. [Anna] is now 12 years old. She presented as a smart but quiet child, attending . . . Middle School, where she has a great attendance record and good grades. She plays clarinet in the band and participates in color guard. She enjoys art class and tending to the farm animals at her "grandparents' home ([Petitioner Robert]'s parents)." She has a strong desire not to have any contact with Respondents. Further, she expresses a desire to be adopted. Although her understanding of adoption is not completely clear, she knows that it is to become a permanent part of a family that "keeps you safe and takes care of you." [Anna] becomes emotional when remembering life with her dad before removal. [Anna] expresses anger with Respondents for not visiting and for making them wait and never showing up for the prior scheduled visits, even though it was 6 years ago.

52. [Anna] does enjoy contact with some of her biological relatives, including her sisters and aunts, even biological grandparents, but is adamant she does not wish to have a relationship with Respondents.

Based on these findings, the trial court concluded, *inter alia*:

7. [Respondent-Father] has willfully abandoned [Anna] for a period exceeding six months preceding the filing of the petition, under [N.C. Gen. Stat.] § 7B-1111(a)(7). Furthermore, the court finds that Respondent[-]Father has neglected [Anna] by willful abandonment under the meaning of [N.C. Gen. Stat.] § 7B-1111(a)(1). Although evidence was presented of Termination of Parental Rights of Respondent[-]Father's other children, undersigned is not convinced that he is unwilling or unable to provide a safe home at this time under [N.C. Gen. Stat.] § 7B-1111(a)(9).

8. Respondent[-]Father has willfully [forgone] all parental duties and relinquished all parental claims at least since 2016, with the exception of paying court ordered child support since 2017. Respondent[-]Father has not contacted . . . Petitioners or [Anna], despite [Anna] having at least occasional contact with members of Respondent[-]Father's family. With the exception of his short periods of incarceration, last of which occurred in 2017, Respondent[-]Father had the ability to exercise his custody rights to [Anna]. Respondent[-]Father has failed to make any good faith effort to visit or contact [Anna] in any way. Even having evidence of a potential incident causing him to question the well[-]being of [Anna], . . . Respondent[-]Father still took no action to even check on the welfare of [Anna].

Finally, the trial court concluded that it was in Anna's best interest for "custody and placement to remain with . . . Petitioners." Accordingly, the trial court ordered that Respondents' parental rights to Anna be terminated.

Respondent-Father timely filed notice of appeal.²

II. Discussion

² Respondent-Mother is not a party to this appeal; therefore, we will not address the trial court's order insofar as it applies to Respondent-Mother.

Respondent-Father challenges several of the trial court's findings of fact and argues that the trial court erred by concluding that grounds for termination of his parental rights existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (7). Respondent-Father additionally asserts that, even if grounds for termination existed, the trial court abused its discretion because termination of his parental rights was not in Anna's best interests. After careful review, we conclude that the trial court's findings of fact do not resolve the question of fact of whether Respondent-Father *willfully* abandoned Anna; accordingly, we vacate and remand for additional findings of fact.

A. Standard of Review

"According to well-established North Carolina law, a termination of parental rights proceeding involves the use of a two-step process consisting of an adjudicatory hearing and a dispositional hearing." *In re D.T.H.*, 378 N.C. 576, 579, 862 S.E.2d 651, 654 (2021); *see also* N.C. Gen. Stat. §§ 7B-1109, -1110. Our appellate courts review a trial court's adjudication that one or more grounds for termination exist under § 7B-1111 to discern "whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law, with unchallenged findings of fact made at the adjudicatory stage being binding on appeal, and with the trial court's conclusions of law being subject to de novo review on appeal." *Id.* at 580, 862 S.E.2d at 655 (citations and internal quotation marks omitted).

B. Analysis

Respondent-Father argues that the trial court erred by concluding that he willfully abandoned Anna pursuant to N.C. Gen. Stat. § 7B-1111(a)(7), and that he neglected Anna pursuant to N.C. Gen. Stat. § 7B-1111(a)(1). For the reasons that follow, we conclude that the trial court failed to make sufficient findings of fact to support the adjudication of those grounds for termination.

A trial court may terminate parental rights upon an adjudication that “[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 is also included in the definition of a “neglected juvenile” as used in the ground for termination of neglect under § 7B-1111(a)(1). *See id.* §§ 7B-1111(a)(1), -101(15). As with the ground of abandonment under § 7B-1111(a)(7), neglect by abandonment under § 7B-1111(a)(1) requires that the conduct of the parent be willful. *See In re N.D.A.*, 373 N.C. 71, 81 n.2, 833 S.E.2d 768, 776 n.2 (2019) (“Although the word ‘willful’ does not appear in the statutory definition of neglect by abandonment, this Court has suggested that abandonment is inherently a willful act.” (citation omitted)); *accord Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962) (“By the terms of the statute it is necessary that such abandonment be [willful] . . .”).

“Abandonment implies conduct on the part of the parent which manifests a willful determination to [forgo] all parental duties and relinquish all parental claims to the child.” *In re B.R.L.*, 379 N.C. 15, 18, 863 S.E.2d 763, 767 (2021) (citation

omitted). “To find that a parent has willfully abandoned his or her child, the trial court must find evidence that the parent deliberately eschewed his or her parental responsibilities in their entirety.” *Id.* (citation and internal quotation marks omitted). “[T]he question of willful intent is a factual one for the trial court to decide based on the evidence presented” *Id.*

“In the context of abandonment, willfulness is more than an intention to do a thing; there must also be purpose and deliberation.” *In re D.M.O.*, 250 N.C. App. 570, 572–73, 794 S.E.2d 858, 861 (2016) (citation and internal quotation marks omitted). “Because [willful] intent is an integral part of abandonment and is a question of fact to be determined from the evidence, a trial court must make adequate evidentiary findings to support its ultimate finding of willful intent.” *Id.* at 573, 794 S.E.2d at 861 (citation and internal quotation marks omitted).

Indeed, the trial court made a series of findings of fact that tend to support such an ultimate finding, several of which Respondent-Father does not challenge on appeal. The unchallenged—and therefore, binding, *D.T.H.*, 378 N.C. at 580, 862 S.E.2d at 655—findings of fact include findings 40–42, which detail a “potential incident” in January 2021 involving Anna, Heather’s daughter, and Heather’s brother-in-law (who is also Petitioner Lesley Grigg’s brother). These findings of fact specifically informed the final portion of the trial court’s conclusion of law 8: “Even having evidence of a potential incident causing him to question the well[-]being of [Anna], . . . Respondent[-]Father still took no action to even check on the welfare of

[Anna].”

Neither does Respondent-Father challenge finding of fact 20, which states that he has not “spoken with or seen” Anna during the several years that she has been in Petitioners’ custody, nor does he challenge finding of fact 36, which states that Anna “has a Facebook account, which she has not blocked . . . Respondent[-]Father from[,]” yet she “has not received any messages from him[.]” The trial court also made multiple unchallenged findings regarding relatives of Respondent-Father who have had or maintained relationships with Petitioners or Anna. Each of these unchallenged findings support the trial court’s conclusion that Respondent-Father “has not contacted . . . Petitioners or [Anna], despite [Anna] having at least occasional contact with members of Respondent[-]Father’s family.”

However, Respondent-Father argues, *inter alia*, that the trial court erred by concluding that his actions were willful. He notes that he “consistently and voluntarily paid child support, sought out information about Anna from family members,” and also “reached out to Petitioners via social media[.]” The trial court’s findings of fact reflect each of these assertions, which are in tension—and, accordingly, must be reconciled—with an ultimate finding that Respondent-Father “deliberately eschewed his . . . parental responsibilities *in their entirety*.” *B.R.L.*, 379 N.C. at 18, 863 S.E.2d at 767 (emphasis added) (citation omitted).

The trial court’s finding of fact 35 is emblematic of this tension. That finding first states that Respondent-Father “questioned child support case workers about

visitation rights at the time of establishment and was advised to seek counsel.” This portion of the finding tends to suggest that Respondent-Father has not “deliberately eschewed his . . . parental responsibilities in their entirety.” *Id.* (citation omitted). However, in that same finding of fact, the trial court adds that Respondent-Father “did not seek visitation or custody at any point after receiving that guidance” until the relevant six-month period had already passed, which tends to support the trial court’s conclusion of abandonment.

Additionally, both the record and the trial court’s findings of fact are replete with evidence of the animus between Respondent-Father and Heather, which Respondent-Father calls “the high conflict within [his] family,” and which he argues impeded his efforts to maintain a presence in Anna’s life. Such evidence bears on the question of fact of the willfulness of Respondent-Father’s alleged abandonment of Anna, as well. Respondent-Father variously contends that he “had to obtain information about Anna’s whereabouts in a clandestine manner[,]” knew “that Heather would prevent Anna from receiving anything from” him, and that “Heather made it clear that she would do everything she could to prevent him from being a part of Anna’s life.” Despite this conflicting evidence regarding whether Respondent-Father intended to abandon Anna, the trial court did not make a corresponding “ultimate finding of willful intent.” *D.M.O.*, 250 N.C. App. at 573, 794 S.E.2d at 861 (citation omitted).

“In light of the conflicting evidence received at the termination hearing, the

trial court had the obligation to resolve a substantial factual dispute over the extent to which” Respondent-Father’s alleged abandonment of Anna was willful. *D.T.H.*, 378 N.C. at 590, 862 S.E.2d at 661. Although the trial court’s findings of fact support a conclusion that Respondent-Father “eschewed his . . . parental responsibilities[.]” there is not an ultimate finding of fact to resolve the factual issue of whether such eschewal was purposeful and deliberate—and as a result, willful. *B.R.L.*, 379 N.C. at 18, 863 S.E.2d at 767 (citation omitted).

Accordingly, we conclude that the trial court erred by failing to make sufficient findings of fact to support a determination that Respondent-Father’s parental rights in Anna were subject to termination on the basis of either neglect by abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) or abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). *See D.T.H.*, 378 N.C. at 592, 862 S.E.2d at 662.

III. Conclusion

For the foregoing reasons, we must vacate the trial court’s order terminating Respondent-Father’s parental rights to Anna. “[W]e remand this case to the District Court . . . for further proceedings not inconsistent with this opinion, including the entry of a new order determining whether [R]espondent-[F]ather’s parental rights in [Anna] were subject to termination on the basis of these two grounds for termination.” *Id.* at 592, 862 S.E.2d at 662–63. “In the exercise of its discretion, the trial court may receive additional evidence on remand if it elects to do so.” *Id.* at 593, 862 S.E.2d at 663.

IN RE: A.R.C.

Opinion of the Court

VACATED AND REMANDED.

Judges FLOOD and RIGGS concur.

Report per Rule 30(e).