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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-593

Filed 16 May 2023

Beaufort County, No. 20 JT 120

IN THE MATTER OF D.M.C.

Appeal by respondent from order entered 21 April 2022 by Judge Keith B. Mason in Beaufort County District Court. Heard in the Court of Appeals 25 April 2023.

Mills & Alcorn, L.L.P., by Cynthia A. Mills, for the petitioner-appellee.

David A. Perez for the respondent-appellant.

TYSON, Judge.

Respondent appeals from an order by the district court terminating her parental rights. We affirm.

I. Background

Respondent is the biological mother of a thirteen-year-old female child, Debra. (Pseudonym used to protect the identity of the juvenile. N.C. R. App. P. 42(b)). Debra's biological father's parental rights were previously terminated.

Respondent suffers from drug addictions. Debra was placed with Petitioner

and her then-fiancé from 10 May 2015 through 5 August 2015, pursuant to a Department of Social Services voluntary placement agreement. Debra was later placed with a great aunt located in Pitt County pursuant to a voluntary placement agreement on 5 August 2015. Petitioner and her then-fiancé sought and were granted a temporary *ex parte* custody order granting them temporary primary care, custody, and control of Debra.

On 13 October 2016 the district court entered an order continuing an N.C. Gen. Stat. § 50C hearing until 31 October 2016. At the hearing the trial court entered a temporary Rule 50C no contact order against Respondent. A permanent custody order was entered 21 February 2018, which granted Petitioner custody and control of Debra while Respondent was allowed visitation. The trial court modified the custody order to allow Respondent unsupervised visitation, if she submitted a negative hair follicle test.

Respondent submitted a negative hair follicle test in May 2019 and unsupervised visitation resumed. Respondent did not submit any other hair follicle test results and unsupervised visitation ended in July 2019.

Petitioner filed a petition for termination of parental rights on 13 October 2020. The trial court held an adjudicatory hearing on 16 March 2022 and a dispositional hearing on 24 March 2022. The trial court entered an order terminating the parental rights of Respondent on 14 June 2022. Respondent appeals.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Issue

Respondent argues the trial court erred by terminating her parental rights for willful abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2021).

IV. Standard of Review

“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 K.J.E.*, 378 N.C. 620, 622, 2021-NCSC-109, ¶ 5, 862 S.E.2d 620, 621-22 (2021) (citation omitted). The trial court’s “best interests” determination is reviewed for abuse of discretion. *In re Anderson*, 151 N.C. App. 94, 98, 564 S.E.2d 599, 602 (2002) (citation omitted).

V. Termination of Respondent’s Parental Rights

“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). If relevant, competent, and material evidence supports the findings, they are “binding on appeal.” *In re McCabe*, 157 N.C. App. 673, 679, 580 S.E.2d 69, 73 (2003) (citations omitted).

A trial court may terminate parental rights upon a finding “[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately

IN RE D.M.C.

Opinion of the Court

preceding the filing of the petition or motion[.]” N.C. Gen. Stat. § 7B-1111(a)(7). Our Supreme Court held: “abandonment 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).

Respondent challenges several findings of fact detailing her knowledge of the Rule 50C order still being in place. Respondent’s own email from 9 May 2019 states: “Since the protection order has expired[,] I was unsure whether to contact you or . . . directly. Please let me know for further reference and if any additional information is needed.” Properly admitted evidence in the record supports the trial court’s finding that Respondent knew of the Rule 50C order’s expiration prior to the statutory period.

“The trial judge determines the weight to be given the testimony and the reasonable inferences to be drawn therefrom. If a different inference may be drawn from the evidence, he alone determines which inferences to draw and which to reject.” *In re Hughes*, 74 N.C. App. 751, 759, 330 S.E.2d 213, 218 (1985) (citation omitted). Respondent’s challenges to these findings of fact are overruled.

Respondent admits she did not visit Debra after July 2019 and asserts she was unable to drug test or to visit the Family Center because she could not afford the services. Respondent acknowledged she understood the Rule 50C order to be temporary instead of permanent.

The trial court’s uncontested findings of fact found:

18. The Juvenile was initially placed in the custody of the Petitioner on August 7, 2015 pursuant to an Ex Parte Custody Order in Pitt County file 15 CvD 1901.

19. A review and temporary custody hearing was held August 12, 2015 and a Temporary Custody order was subsequently entered on 1 October 2015[,] which continued custody of the Juvenile in the care of the Petitioner. Respondent was awarded supervised visitation every other weekend for two hours on Saturday and an additional two hours on Sunday, to be supervised by [Petitioner's Mother].

...

21. Between October 1, 2015[,] and February 21, 2018[,] Respondent visited with the Juvenile sporadically under the supervision of Petitioner's mother[.]

22. On February 21, 2018[,] the Court entered a Permanent Custody Order regarding the Juvenile in Pitt County file 15 CvD 1901 which continued custody with the Petitioner and provided visitation for the Respondent upon certain conditions being met.

...

26. The February 21, 2018 Permanent Custody Order further provided that Respondent was granted visitation every other Saturday from 10:00 am until 4:00 pm provided she take a hair follicle drug test every three (3) months. If Respondent failed to submit to the test it was to be considered a positive test by the Court.

27. The February 21, 2019 Permanent Custody order gave Respondent unrestricted access to the Juvenile's school, medical, and other information, as well as the right to participate in school conferences, events and activities, and the right to consult with teachers and school personnel.

28. Respondent visited with the Juvenile between February 2018 and February 4, 2019. However, Respondent did not submit to the required drug testing as

specified in the February 21, 2018 Permanent Custody Order.

29. On February 4, 2019[,] Petitioner filed a motion for another Ex Parte Custody Order seeking to terminate Respondent's visitation due to domestic violence that occurred in Respondent's home and her then live in boyfriend [sic] . . . As a result of the domestic violence [Respondent's boyfriend] was charged with assault on a female; assault by strangulation; communicating threats; and intimidating a witness.

30. An Ex Parte Order was entered on February 4, 2019[,] which terminated the Respondent's visitation with the Juvenile.

. . .

32. The February 21, 2019 Order provided that in order for Respondent to re-obtain unsupervised visitation with the Juvenile the Respondent needed to submit to a hair follicle test, and that the test was to be as comprehensive as possible and test for as many substances as possible. The test results were to be provided directly to Petitioner's attorney of record and the information provided to the Court at any return hearing.

33. The Court further ordered if the Respondent tested positive for any substance other than her prescribed medications, supervised visits would continue at the Pitt County Family Center. If Respondent did not test positive for any substance other than her prescribed medications her visits would become unsupervised once again as set out in the February 21, 2018 Order.

. . .

35. The February 21, 2019 Order provided that all provisions of the February 21, 2018 Custody Order were to remain in full force and effect.

36. Respondent did not obtain a drug test as prescribed by

the Court until three (3) months later, in May 2019.

37. The May 2019 drug test was negative. Respondent notified Petitioner's attorney of the test result and forwarded a copy of the test.

38. Unsupervised visitation for Respondent began again on May 18, 2019.

39. On June 27, 2019[,] Petitioner's attorney sent an e-mail to Respondent reminding her of Respondent's continued obligation to submit to a hair follicle test every three (3) months. The e-mail stated that because her last test was May 9, 2019[,] the next test result would be due August 9, 2019.

40. Respondent took no other hair follicle drug tests as prescribed by the February 21, 2018 and February 21, 2019 Court Orders.

41. Petitioner terminated the unsupervised visitation after the end of July 2019 due to Respondent's non-compliance with the Court Orders.

...

43. Subsequent to the May 2019 [test] Respondent has never submitted to a hair follicle test. Pursuant to the February 21, 2019 Custody Order, the failure to submit to the required drug tests was deemed to be a positive test.

...

47. The Respondent has paid no child support to the Juvenile since August 7, 2015[,] when custody was awarded to Petitioner.

...

50. Respondent also maintains that she was unable to pay for a drug test or visit the Family Center because of a lack of funds.

51. However, Respondent testified that she is currently enrolled in the paralegal program at Pitt Community College and receives approximately \$2,000 per Semester for financial assistance. Respondent also receives Social Security benefits for her two (2) other minor children. In addition, Respondent receives her own Social Security disability benefit of \$1,081.20 per month.

52. Petitioner testified that up until May 2019 Respondent also received Social Security benefits for the Juvenile even though the Juvenile has been in the custody of Petitioner since August 2015.

...

56. In the February 21, 2019 Order Respondent's visitation was modified as a result of domestic violence occurring in her home. Respondent was given supervised visitation and requirements were put in place for Respondent to re-obtain unsupervision [sic]. Respondent has not met these requirements.

These unchallenged findings of fact tend to show Respondent made no efforts to fulfill any parental duty or responsibility to Debra and she completely abandoned her from July 2019 until October 2020. The unchallenged findings also tend to show Respondent knew of methods to contact Petitioner or her representatives and the Family Center for supervised and unsupervised visitation and she failed to do so. The evidence, including Respondent's own communications, also tends to show her knowledge of the Rule 50C order's expiration. The trial court properly found and concluded Respondent had willfully avoided parental responsibility throughout Debra's life and specifically during the relevant six-month period of the trial court's findings. Respondent's argument is overruled.

VI. Conclusion

The findings of fact and conclusions of law thereon in the order terminating Respondent's parental rights are supported by clear, cogent, and convincing evidence in the record. Respondent was provided with multiple opportunities to demonstrate parental responsibility and abilities to care for Debra, and she squandered them.

The trial court's conclusion to terminate Respondent's parental rights to Debra for willful abandonment as asserted in the petition and reviewed above is affirmed.

It is so ordered.

AFFIRMED.

Judges COLLINS and RIGGS concur.

Report per Rule 30(e).