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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-93

Filed 3 October 2023

Gaston County, No. 21 JT 199

IN THE MATTER OF: K.C.S.

Appeal by Petitioner from an order entered 18 October 2022 by Judge James A. Jackson in Gaston County District Court. Heard in the Court of Appeals 6 September 2023.

Arnold & Smith, PLLC, by Ashley A. Crowder, for Petitioner-Appellant Mother.

Garron T. Michael, for Respondent-Appellee Father.

WOOD, Judge.

On 27 October 2021, Petitioner (“Mother”) filed an amended petition to terminate Respondent’s (“Father”) parental rights of their daughter, K.C.S., on the sole ground of willful abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2022). The trial court dismissed the petition. After careful review of the Record before us, we affirm.

I. Factual and Procedural History

K.C.S. was born 10 April 2013. Father was first involved in her life when he visited the hospital before Mother and K.C.S. were discharged. Mother and K.C.S. did not see Father until three months later, when he took a paternity test. Following the results of the paternity test, Mother and Father signed an affidavit of parentage and had Father's name listed on her birth certificate.

Following K.C.S.'s birth, there was not a set visitation schedule for Father. Periodically, Mother would text Father to ask him to care for K.C.S. while she worked, and Father would sometimes do so. Father generally saw K.C.S. every three or four months. During 2014, when K.C.S. was approximately one year old, Father did not visit K.C.S. or call to talk to her or to inquire about how she was doing.

Father testified at the termination hearing he visited K.C.S. for Easter in 2015, took pictures with her, gave her gifts and an Easter basket, and spent time with her that day. The next time Father saw K.C.S., and the last time he saw her prior to Mother's filing the petition for termination of parental rights, was in 2017 when he signed papers to allow Mother to obtain a passport for K.C.S. Mother picked up Father, and the three of them made the trip to the passport agency in Charlotte. Mother testified that thereafter, Father contacted her about K.C.S. "maybe twice" in 2017 or after saying, "How is daddy's little girl?" and asking Mother to tell K.C.S. "daddy loves her."

Mother married C. F. ("Stepfather") and changed her phone number in 2018 or 2019 (it is unclear from the testimony because both she and Stepfather stated both

years). Stepfather testified he believed Mother had changed phone numbers at least by June 2018, but he was not certain. Mother did not give Father her new phone number, and Father did not know she had changed numbers. Father testified he texted Mother numerous times on or after January 2018 requesting visitation with K.C.S., but he never received a response. At the termination hearing, Mother's counsel objected to the introduction of texts purportedly sent to her by Father because of a "total lack of foundation in terms of the phone number that was sent to, phone number that was sent from. . . . It's just the messages themselves." Initially, the trial court sustained the objection. Father further testified he texted Mother approximately nine times in May 2018 asking to see K.C.S., but she did not respond. Thereafter, the court allowed admission of these text messages.

Mother also moved in 2018 or 2019 (Mother testified to both years). Mother did not tell Father her new address, and Father did not know her new address. Before Mother moved, Father did not visit her house because, according to his testimony, he did not have a working car or employment at that time. Some time before March 2020, Mother, through an attorney, sent mail to Father requesting that he consent to a stepparent adoption of K.C.S. Mother did not receive any response from Father.

Mother filed a petition to terminate Father's parental rights on 5 October 2021. On or about 17 or 18 October 2021, Father went to Mother's house hoping to speak with K.C.S. Father's wife had found Mother's address through researching Mother's name on paid websites. When Father arrived at Mother's house, K.C.S. was outside

playing with neighbors, and Father went to Mother's front door. Stepfather went outside to speak with Father, and they spoke for about thirty to forty-five minutes. Father was not able to interact with K.C.S. on this date.

Mother filed an amended petition to terminate Father's parental rights on 27 October 2021, alleging the sole ground for termination as willful abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). The amended petition was served on Father on 10 December 2021. The trial court held the termination hearing on 13 September 2022.

Father testified his lack of a relationship with K.C.S. was "not by [his] own means. Not by [his] not wanting to have a relationship with her." He further testified he loved K.C.S., and "[i]f given a chance to be in [her] life," he would. He testified he did not know how to contact Mother after she moved and changed her phone number until his wife paid to find Mother's address through her website searches.

Following the completion of the evidence at the hearing, the trial court stated:

Looking back at the previous six months prior to the filing of the Petition the Court can't be clearly convinced by the evidence that [Father] knew where [Mother] lived during that six-month period So the Court cannot by clear, cogent, and convincing evidence say that he wil[l]fully intended to abandon his child in the six months preceding the institution of this action. Specifically, based on the fact that the uncontroverted evidence shows – uncontroverted evidence shows that he did not have the address and phone number of [Mother], which she could have easily given to him. And he actually found her residence and appeared at her residence in October 2021.

The trial court entered a written order denying Mother's petition to terminate parental rights on 18 October 2022, finding "Mother has failed to prove by clear, cogent, and convincing evidence Father willfully abandoned the child." The trial court concluded as a matter of law Mother failed to prove willful abandonment grounds existed to terminate Father's parental rights and dismissed the petition.

Mother appeals pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2022).

II. Standard of Review

"The standard for review in termination of parental rights cases is whether the court's findings of fact are based upon clear, cogent and convincing evidence and whether the findings support the conclusions of law." *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000) (quotation marks omitted). "The trial court's conclusions of law are fully reviewable *de novo* by the appellate court." *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008) (quotation marks omitted).

III. Analysis

N.C. Gen. Stat. § 7B-1111 provides, as a ground for termination of parental rights, "The 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). "Whether a biological parent has a willful intent to abandon his child is a question of fact to be determined from the evidence." *In re N.D.A.*, 373 N.C. 71, 77, 833 S.E.2d 768, 773 (2019).

“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). “If a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wil[l]fully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.” *In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 773 (2019) (brackets omitted).

“Although 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 D.E.M.*, 257 N.C. App. 618, 619, 810 S.E.2d 375, 378 (2018).

Mother challenges the trial court’s twenty-sixth finding of fact which states:

Due to [Father’s] lack of knowledge of [Mother’s] phone number and address of residence after 2019 until the filing of this action, [Mother] has failed [to] prove[] by clear, cogent, and convincing evidence that [Father] willfully abandoned the child for at least six consecutive months prior to the filing of the petition pursuant to N.C. Gen. Stat. § 7B-1111(a)(7).

The trial court heard evidence Father saw K.C.S. after she was born before Mother and K.C.S. were discharged from the hospital. Thereafter, he established paternity and signed an affidavit of paternity, showing some evidence he cared enough to establish he was indeed her father. Father was able to care for K.C.S.

occasionally while Mother worked, and Mother testified he cared for her every three or four months. Father's willingness to care for K.C.S. at this early stage in her life shows some desire on his part to be involved in her life. Father sought to continue to be involved in K.C.S.'s life by visiting her during Easter in 2015 and bringing her gifts and an Easter basket. Father allowed Mother to obtain a passport for K.C.S. and visited the passport office with Mother and K.C.S. to fill out the application. While the trial court may consider Father's conduct during this time in evaluating his credibility and intentions, the six months preceding the filing of the petition is the period the court must focus on in adjudicating willful abandonment.

During the controlling six-month time period, Father could not provide documentation of any efforts he made to contact Mother. However, the trial court heard evidence from both Father and Mother that after Mother moved in 2018 or 2019, she changed her phone number and did not provide her new address or phone number to Father. The trial court heard evidence that prior to Mother's move, most contact between Mother and Father arranging visitation with K.C.S. was initiated by Mother, but that Father had occasionally reached out to Mother. The trial court heard evidence from Father that on at least two separate occasions in 2018 he had tried to text Mother but received no response. Evidence was presented that after the filing of the petition by Mother, Father's wife searched for and located Mother's address and, thereafter, Father went to Mother's residence and made contact with Stepfather. The trial court, being the ultimate determiner of credibility of the

witnesses, found that because Father had neither Mother's new phone number nor address, it could not "in good conscience" find grounds for termination based on willful abandonment. If Father did not have Mother's address or phone number, he could not have contacted her to arrange visitation or communication with K.C.S. As for the trial court's findings of fact, Mother challenges only finding of fact number twenty-six in which the trial court found no ground for termination based on willful abandonment because of Father's not knowing Mother's phone number or address. This finding of fact is supported by clear and convincing evidence because both Mother and Father testified Father did not have Mother's address or phone number. *In re Huff*, 140 N.C. App. at 291, 536 S.E.2d at 840. We therefore affirm the trial court's finding that Mother failed to prove by clear and convincing evidence that Father willfully abandoned K.C.S. for at least six months prior to Mother's filing the termination petition.

Considered together, the evidence tended to demonstrate Father was apathetic, at best, regarding his relationship with K.C.S. However, we cannot say Father's conduct amounted to a "willful determination to forego all parental duties[.]" *In re Young*, 346 N.C. at 251, 485 S.E.2d at 617. Nor can we say Father completely "relinquishe[d] all parental claims" to K.C.S. since the evidence tended to show that Father visited and brought gifts for his daughter at Easter in 2015, responded positively when Mother initiated contact with him, occasionally cared for K.C.S. while Mother worked, and visited Mother's house very shortly after finding out Mother had

filed a petition to terminate his parental rights to K.C.S. *In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 773; *In re D.E.M.*, 257 N.C. App. at 619, 810 S.E.2d at 378 (the six months preceding the petition for termination is controlling, but we may consider conduct outside that window for evaluating Father’s credibility and intentions).

Mother relies upon a statement by our Supreme Court in the case of *In re C.A.H.* that “Respondent cannot rely upon petitioner’s lack of provision of her address to him to support his claim that his lack of contact was not willful when respondent never made a request for the contact information.” 375 N.C. 750, 758, 850 S.E.2d 921, 926 (2020). However, in that case, the trial court specifically “found that respondent possessed petitioner’s telephone number and ha[d] always had the ability to reach petitioner via this telephone number.” *Id.* at 759, 850 S.E.2d at 927 (quotation marks and brackets omitted). Here, the evidence showed Mother changed her phone number and address without providing her new contact information to Father. There is no evidence in the record Father had a way of contacting Mother following this. Therefore, this case is distinguishable from *In re C.A.H.* because Father did not have a correct phone number or other way of contacting Mother at all relevant times.

Because we hold clear and convincing evidence supported the trial court’s factual findings that Father did not know Mother’s phone number or new address and, therefore, did not willfully abandon K.C.S., we also hold the trial court’s factual findings support its conclusion of law that Mother did not prove by clear and

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convincing evidence Father's parental rights should be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). *In re Huff*, 140 N.C. App. at 291, 536 S.E.2d at 840.

For the foregoing reasons, we affirm the trial court's dismissal of Mother's petition for termination of Father's parental rights based on the absence of the grounds for termination, specifically willful abandonment, pursuant to N.C. Gen. Stat. § 7B-1111(a)(7).

AFFIRMED.

Judges GRIFFIN and STADING concur.

Report per Rule 30(e).