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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-188

Filed 17 September 2024

Moore County, No. 22 JT 65

IN THE MATTER OF: B.-L.K.

Appeal by respondent-father from order entered 15 November 2023 by Judge Warren McSweeney in District Court, Moore County. Heard in the Court of Appeals 28 August 2024.

Mercedes O. Chut for respondent-appellant father.

Foyles Law Firm, PLLC, by Jody Stuart Foyles, for petitioner-appellee mother.

No brief filed by Peter E. Brownback for the Guardian ad Litem.

ARROWOOD, Judge.

Respondent-father appeals from the trial court's order entered 15 November 2023 terminating his parental rights to B.-L.K. ("Bailey").¹ We affirm the trial court's order.

I. Background

¹ A pseudonym is used to protect the identity of the child.

H.L.C. Jr. (“respondent-father”) and C.K. (“petitioner-mother”) together have a daughter Bailey, who was born in 2012. Shortly after Bailey’s birth, respondent-father was arrested in relation to the operation of a methamphetamine laboratory and was released on bond until 24 September 2013 when he was arrested for additional drug crimes. He was incarcerated on 27 July 2014. Petitioner-mother filed this action 12 July 2022, and the matter came on for hearing 14 September 2023 before the Honorable Warren McSweeney in Moore County District Court.

Respondent-father is not listed on Bailey’s birth certificate. Petitioner-mother testified that respondent-father was not listed on the birth certificate because “he told [her] when [she] was pregnant that he didn’t want to have to pay child support,” and he tried to “get [her] to terminate the pregnancy so he didn’t have to pay child support.” Petitioner-mother testified that she had been pregnant with respondent-father’s child the year prior to Bailey’s birth, and she terminated that pregnancy because respondent-father “convinced [her] that it was in the best interest of him and his son [] at the time.” Petitioner-mother also stated that respondent-father did not establish paternity in any manner for Bailey; he did not file any affidavit of paternity or make any efforts to legitimate Bailey as her father. Respondent-father also confirmed he had not completed steps to establish paternity.

At the time of the hearing, Bailey lived with petitioner-mother and her husband R.D. Petitioner-mother testified that she has been the sole caregiver to Bailey since her birth. After Bailey’s birth in March 2012, respondent-father and

petitioner-mother lived together with Bailey; respondent-father testified that they lived together for approximately nine to twelve months, and petitioner-mother stated that they lived together only until Bailey was about three months old. Petitioner-mother testified that she and respondent-father slept in separate rooms.

She explained that during the time after she and Bailey stopped living with respondent-father and he was out on bond, respondent-father did not have any visitation, nor did he inquire after Bailey. She testified that he also never attended any of her prenatal appointments, nor did he attend any of Bailey's medical appointments after she was born, including a two-week hospital stay when Bailey was two weeks old. Respondent-father contradicted this testimony and stated he attended doctor's appointments with petitioner-mother, helped care for Bailey when they lived together, and saw Bailey "up to the last week of [him] being a free man[]" before he was taken back into custody 24 September 2013 on separate charges. He also denied that Bailey was hospitalized for two weeks as a newborn.

Petitioner-mother further testified that during respondent-father's incarceration, she received one letter from respondent-father stating "he knew that [Bailey] was in good care" with her. She also recalled receiving "a few cards" for Bailey from respondent-father after she and R.D. started dating and Bailey was five years old. Otherwise, respondent-father did not send Bailey Christmas or birthday cards or gifts. Respondent-father testified that he sent cards, letters, and pictures to Bailey throughout his incarceration until 2017 when he no longer had an address for

petitioner-mother. He also attempted to send Bailey gifts through a program, but petitioner-mother refused to be involved in the program and allow Bailey to receive gifts from him.

Petitioner-mother testified that she did not read any cards or letters respondent-father sent to Bailey when they came but instead showed them to Bailey when she believed Bailey was old enough to understand that R.D. was not her biological father. She told respondent-father of this plan in a letter. She also stated that at one point during his incarceration, she asked respondent-father not to send cards or letters because she believed he was doing so to “drive a wedge between [her] and [R.D.]”

On cross examination, petitioner-mother stated that respondent-father stopped sending cards for Bailey in 2018, but because she changed residences, he did not have a way to contact her directly. However, she testified that she left a forwarding address at her previous residence, and she did not receive any communication from respondent-father via mail forwarding. Petitioner-mother sent respondent-father a letter in 2022 “asking him to sign over his rights willingly” so that R.D. would be able to adopt Bailey. Respondent-father sent a letter refusing to do so, and he also sent a letter to Bailey at the same time.

Petitioner-mother stated that when respondent-father was incarcerated, she was unable to view his Facebook account or send him messages, and she maintained the same phone number for a significant period of time. She also testified that

respondent-father's family never contacted her while he was incarcerated, and she reached out to respondent-father's other children only after Bailey requested to meet them in 2021. Respondent-father stated that he asked his family members to contact petitioner-mother to get him an address, but they were blocked from her Facebook.

Respondent-father was released from prison on 17 July 2023. Petitioner-mother testified that after his release, he did not reach out himself or through family to invite Bailey to his release party even though his other children were present. Respondent-father testified that he earned approximately \$40,000.00 in prison through work release beginning in 2021, and his family sent him money occasionally while he was incarcerated. He stated he purchased a vehicle, camper, and insurance when he was released, but he did not send money to Bailey either while incarcerated or after his release.

Respondent-father called Tamara Muse ("Ms. Muse") as a witness. Ms. Muse and respondent-father have a child together, and Ms. Muse testified that respondent-father is active in their daughter's life; she explained she has a binder full of letters respondent-father sent her daughter while he was incarcerated. She also stated that respondent-father had asked her to contact petitioner-mother on his behalf, and she was successful in connecting with her in 2021. Ms. Muse's daughter attended the same school as Bailey, and Ms. Muse approached Bailey at school and introduced her child as Bailey's sister. Ms. Muse also testified that her daughter and respondent-father communicated once a week via telephone while he was incarcerated.

Petitioner-mother testified that Bailey has never spoken to respondent-father, respondent-father has not seen Bailey since she was three months old, and Bailey likely would not recognize respondent-father if she saw him. Petitioner-mother explained that she left the decision up to Bailey “if she wanted to meet him when he got out” of prison, and at the time of the hearing, “she [did] not want to.” Respondent-father testified that he “wanted to establish a relationship” with Bailey and acknowledged that he had no relationship with her at the time of the hearing.

The trial court entered an order on 15 November 2023 terminating respondent-father’s parental rights. The trial court made the following relevant findings of fact:

13. That during [the] time prior to the birth of the subject minor child the Petitioner became pregnant however aborted the minor child at the demand of the Respondent.

14. That while the Petitioner was pregnant with the subject minor child of this action, the Respondent requested Petitioner abort said child.

15. That the Respondent engaged in criminal activities throughout the Petitioner’ [sic] pregnancy and subsequent to the birth of the child, to include operating a methamphetamine laboratory for which he was eventually convicted for operating the same.

16. That Petitioner and respondent resided in the same residence for approximately three months after the birth of the minor child, however living in separate bedrooms.

17. That the Petitioner was solely responsible for the minor child’ [sic] care during said time.

18. That the Petitioner left the residence of the Respondent due to the Respondents [sic] criminal activities when the child was approximately three months old.

19. That approximately two years later the Respondent, was subsequently convicted of criminal offenses associated with operating a methamphetamine laboratory and received a 12 year prison sentence.

20. That the Respondent was out on bail and not incarcerated prior to his incarceration.

21. That the [sic] after the Petitioner left the Respondents [sic] residence the Respondent never visited the minor child for the approximate two years prior to his incarceration.

22. That the Respondent never called to check on the minor child for the two years prior to his incarceration.

23. That the Respondent never attended a medical appointment for the two years prior to his incarceration.

24. That the Respondent knew how to contact the Petitioner as her cellular phone number did not change prior to the Respondents [sic] incarceration.

25. That the Respondent is not listed on the minor child' [sic] birth certificate.

26. That the Respondent never prior to nor subsequent to his incarceration legitimated the minor child pursuant to North Carolina General Statute 49.10.

27. That the Respondent never prior to nor subsequent to his [incarceration] moved to establish paternity of the minor child pursuant to any North Carolina General Statute nor any other judicial proceeding, including Chapter 50 custodial action[.]

28. That the Respondent never prior to nor subsequent to his [incarceration] provided any substantial financial support or consistent care with respect to the minor child nor the Petitioner.

29. That the Respondent has not provided any financial support for the minor child since her birth.

30. That the Respondent never prior to nor subsequent to his [incarceration] provided one gift to the minor child nor Petitioner.

31. After the Respondent' [sic] incarceration the same never called to check on the minor child.

32. That the Respondent blocked the Petitioner on his Facebook Account to preclude her from contacting him after his incarceration.

33. That the Respondent has never seen nor spoken to the minor child since she was three months old.

....

35. That the Respondent sent approximately six cards to the minor child over a nine year span.

36. That since the child' [sic] birth the Respondent has never inquired as to the minor child' [sic] well-being to conclude medical, academic nor emotional well-being.

37. That prior to the Respondent' [sic] incarceration the Petitioner was the minor child' [sic] sole caretaker.

38. That the Petitioner and her spouse have been the sole caretakers of the minor child for the last nine years.

39. That the minor child would not recognize the Respondent if he presented himself to her.

40. That the Respondent never sent a birthday nor Christmas present to the minor child by way of his family.

41. That the Respondent earned forty-five (\$45,000) thousand dollars through a work program while incarcerated however never provided one penny of support to Petitioner on behalf of the minor child.

42. That subsequent to the Respondent' [sic] release from prison he purchased a new truck and a RV to reside in, however did not provide any support to the Petitioner for the minor child.

43. That the Respondent as of the instant hearing has never provided one dollar of monetary support for the benefit of the minor child.

44. That the Respondent has never provided any familial support for the minor child.

45. At all times since the minor child's birth; the minor child has been in the exclusive care of the Petitioner[.]

46. That the Respondent has willfully failed to maintain contact with the minor child as Respondent has not communicated telephonically or otherwise with the petitioner since 2018 when he sent a card.

47. That additionally the Respondent has assumed no parental responsibility for the minor child.

48. That the Respondent has failed to seize the opportunity as a parent in any manner with the child since [her birth.]

49. That as of the instant hearing, Respondent has had no physical contact with the child since the child was approximately 3 months.

50. That the minor child is cared for with the assistance of the spouse of the Petitioner including all financial responsibility[.]

.....

52. That the minor child' [sic] step father is the only

father figure she has ever known since birth.

....

54. That the Respondent has abdicated his parental responsibility for the child to the Spouse of the Petitioner.

55. That the Respondent has willfully failed to provide the love and support that flows naturally and normally between a parent and child.

56. The relationship between the child and the Respondent is non-existent.

57. That the Respondent has abandoned the minor child.

58. That the Respondent has provided no love, care, support or a nurturing environment for the minor child.

....

63. That Respondent has provided no emotional support for the minor child.

64. That the Respondent[] and the minor child have no parent/child relationship or bond.

65. The Court finds as a fact that the Respondent has abandoned the minor child pursuant to 7B-1111(7). The Court further finds that the respondent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of this action.

66. The Court finds by clear, cogent and convincing evidence that the Respondent has inexplicably turned his back on the child. The Respondent has shown a severe lack of any parental concern for his child.

....

72. Furthermore, the Court found that the Petitioner and her spouse have provided all financial and emotional needs for the child.

The trial court also made the following conclusions of law:

6. That the Court finds by clear, cogent, and convincing evidence that statutory grounds exist for the termination of the parental rights of the Respondent, [H.L.C. Jr].

7. The termination of the parental rights of the Respondent . . . is in the best interest of the minor child[.]

Respondent-father entered notice of appeal 14 December 2023.

II. Discussion

On appeal, respondent-father argues that the trial court erred in terminating his parental rights because it did not receive sufficient evidence to support (1) willful abandonment under N.C.G.S. § 7B-1111(a)(7) and (2) termination under N.C.G.S. § 7B-1111(a)(5).

“The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re C.M.P.*, 254 N.C. App. 647, 654 (2017) (citations and internal quotation marks omitted). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re H.B.*, 285 N.C. App. 1, 14 (2022) (citation and quotation marks omitted). Findings of fact that are supported by clear, cogent, and convincing evidence are deemed conclusive even when evidence in the record supports contrary findings. *Id.* (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 (2019) (citation omitted).

“In termination of parental rights proceedings, the trial court’s finding of *any* one of the . . . enumerated grounds is sufficient to support a termination.” *In re H.B.*, 285 N.C. App. at 14–15 (quoting *In re N.T.U.*, 234 N.C. App. 722, 733 (2014)). “Thus, on appeal, if we determine that any one of the statutory grounds enumerated in § 7B-1111(a) is supported by findings of fact based on competent evidence, we need not address the remaining grounds.” *Id.* Accordingly, we limit our review to § 7B-1111(a)(7) and do not address § 7B-1111(a)(5).

North Carolina statute provides that a parent’s parental rights may be terminated upon a finding that “[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition[.]” N.C.G.S. § 7B-1111(a)(7) (2023). The determinative period here is from 12 January 2022 to 12 July 2022.

Our Court has held that in order for a trial court to determine that a parent has willfully abandoned their child, “the findings must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody of the child.” *In re S.Z.H.*, 247 N.C. App. 254, 263 (2016) (cleaned up). “Although the trial court must examine the relevant six-month period in determining whether respondent abandoned the juvenile, the trial court may consider respondent’s conduct outside this window in evaluating respondent’s credibility and intentions.” *In re C.J.H.*, 240 N.C. App. 489, 503 (2015) (citations omitted).

Respondent-father challenges findings of fact 13 to 33, 35 to 50, 52, 54 to 66, and 72. Uncontroverted evidence in the record supports these findings that respondent-father willfully abandoned Bailey. During the relevant period, Bailey was approximately ten years old. The only contact in the record from respondent-father to Bailey during that time was a letter respondent-father sent to Bailey in May 2022 that expressed his love for her but did not include any inquiry into her well-being. Respondent-father participated in a work release program from 2021, and from the time he began working and throughout the relevant period, he did not provide any financial support to Bailey.

Respondent-father cites *In re S.C.L.R.*, 378 N.C. 484 (2021), in support of his argument that petitioner-mother's evidence does not support termination. In that case, our Supreme Court held that the trial court erred by terminating a father's parental rights because the minor child and their guardian had contact with respondent-father, and "respondent-father explained that he asks about Sue's health and well-being when he calls petitioners and [] speaks with Sue every other weekend when Sue is with his mother." *In re S.C.L.R.*, 378 N.C. at 495. In the case *sub judice*, respondent-father never communicated telephonically with Bailey, and in the limited contact he had with her and petitioner-mother during the relevant period, the record is clear that he did not ask about Bailey's health and well-being unlike the father in the cited case.

Furthermore, respondent-father's behavior before and after the relevant period support the trial court's findings. Petitioner-mother testified that respondent-father asked her to terminate her pregnancy and refused to sign the birth certificate because he did not want to pay child support for Bailey. Further, although respondent-father argues he had no way to reach petitioner-mother or Bailey beginning around 2018, there is no evidence in the record to support his claim that he communicated with Bailey during his incarceration before that time. Even though petitioner-mother had the same cellphone number until 2017 or 2018, no evidence in the record suggests respondent-father called her or Bailey to speak to his child at any point in the five or six years since Bailey's birth. He made no efforts to inquire about her well-being while he was incarcerated, and he acknowledged at the hearing that he had no relationship with Bailey. Even after respondent-father was released from prison, he made no efforts to connect with Bailey and support her financially or emotionally.

We note that respondent-father was limited in his ability to associate with Bailey as a result of his incarceration. "Incarceration, standing alone, neither precludes nor requires a finding of willfulness on the issue of abandonment, and despite incarceration, a parent failing to have any contact can be found to have willfully abandoned the child." *In re D.M.O.*, 250 N.C. App. 570, 575 (2016) (cleaned up). Here, even though respondent-father testified that he had no way to contact Bailey or petitioner-mother, the record shows respondent-father had means to do so.

Petitioner-mother had contact with respondent-father's extended family in 2021, and respondent-father testified to asking his family to reach out to petitioner-mother on his behalf throughout his incarceration. Taking these facts into consideration, the trial court could infer that respondent-father had means to contact petitioner-mother and Bailey during the relevant period and chose not to do so.

Additionally, Ms. Muse was in contact with respondent-father during his incarceration, and she also was in contact with petitioner-mother and Bailey. Given Ms. Muse's testimony that respondent-father had asked her to contact petitioner-mother on his behalf, Ms. Muse's contact with both parties in this case was another way that respondent-father could have reached petitioner-mother and Bailey. His failure to do so displays his unwillingness, rather than his inability, to have a relationship with Bailey.

Respondent-father's behavior toward Bailey is in stark contrast to his involvement in Ms. Muse's child's life. Ms. Muse testified that she has a binder full of letters respondent-father sent her daughter during his incarceration, and they talked on the phone weekly while he was in prison. In contrast, even though respondent-father claims to have sent Bailey cards and letters consistently throughout his incarceration, petitioner-mother stated Bailey received a few cards sporadically during that time. Even though respondent-father had the means to contact Bailey before 2018 and after 2021, respondent-father chose not to call to speak to his child.

The record, even though it contains evidence that could support a contrary outcome, supports the trial court's findings of fact that respondent-father willfully abandoned Bailey. His lack of effort to establish a relationship and care for Bailey's well-being during the relevant period and throughout the child's life displays his unwillingness and lack of desire to maintain custody of Bailey. These findings in turn support the trial court's conclusion that statutory grounds existed to terminate respondent-father's parental rights.

III. Conclusion

For the foregoing reasons, we affirm the trial court's order terminating respondent-father's parental rights.

AFFIRMED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).