

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-515

Filed 5 February 2025

Henderson County, No. 20 JT 172

IN THE MATTER OF: A.R.B.

Appeal by respondent from order entered 13 March 2024 by Judge Kimberly Gasperson-Justice in District Court, Henderson County. Heard in the Court of Appeals 15 January 2025.

Sean P. Vitrano, for respondent-appellant father.

Emily Sutton Dezio, for petitioner-appellee mother.

ARROWOOD, Judge.

Respondent-father (“respondent”) appeals from a 13 March 2024 order terminating his parental rights over child A.B.¹ For the following reasons, we affirm the trial court’s order.

I. Factual Background

¹ Initials are used throughout the opinion to protect the identity of the minor child.

Petitioner-mother (“petitioner”) discovered she was pregnant in 2018 following a relationship with respondent. Their relationship soured and petitioner prevented respondent from attending the birth, despite his desire to stay in A.B.’s life.

A few months after the birth, respondent filed a custody suit. The resulting order required petitioner to make A.B. available to respondent for visitation. Respondent attended the first few visitations, between 4 May to 16 May 2019, visitations that petitioner described as cordial. During the 16 May visit, petitioner expressed a need for diapers and wipes, which respondent brought to her the next day. Respondent ceased communication with petitioner after this and failed to attend the next visitation dates.

As part of the custody order, respondent was required to have a 12-panel hair follicle test, although it was petitioner’s understanding that visitation was not contingent on this test. Respondent had not completed this test as of 3 June 2019, so petitioner filed a show cause motion to compel him to complete it. On 21 June 2019, respondent texted petitioner that his hair was long enough to do a drug test, and that her lawyer had “called mine and said she told you not [to] let me see [A.B.] until drug test was taken that’s the only reason I have[n’t] come to see [A.B.]” Petitioner responded that her lawyer had not done this, and that she had told respondent that she “wasn’t taking [his] supervised visitation.” She testified at the hearing that she had not changed her phone number prior to respondent missing his first visitation.

After this exchange of text messages on 21 June 2019, petitioner did not hear from respondent again, nor did respondent visit A.B., provide anything to A.B. or petitioner, file any motions in the custody case, or send petitioner the results of his drug test. Petitioner continued to live in the same house that she had while dating respondent and did not change her phone number.

At the hearing, respondent testified that the drug test had been positive for cocaine and marijuana, and that his failure to continue visitation was due to his desire to handle everything in court; he believed, on the advice of his attorney, that he could not see A.B. following his positive drug test until everyone had gone back to court. When asked why he did not file anything for his custody case after the drug screen, respondent stated that he expected to be called for a court date, but this never happened before the filing of the petition to terminate his rights. He did not send anything to petitioner as he testified that he was unsure that she still lived in the same residence, and that “you can’t fit 30 diapers in the mailbox.”

Petitioner married Kemper Henderson (“Henderson”) on 10 October 2020. On 3 December 2020, petitioner filed a petition for termination of parental rights against respondent, alleging in part that respondent had abandoned their child for the previous six months. On 25 February 2022, the trial court entered an order terminating the parental rights of respondent. Respondent appealed, an appeal which resulted in our decision *In re A.R.B.*, 289 N.C. App. 119 (2023). There, we determined that neither the written order terminating respondent’s rights, nor the

record of the court proceedings, properly indicated the appropriate standard of proof. *Id.* at 126. We declined to reach the merits of the challenges to the factual findings and conclusion of willful abandonment, and vacated and remanded the case to the trial court. *Id.* at 127.

On remand, the trial court conducted a hearing on the grounds for termination at a session on 7 December 2023, and found those grounds existed while also conducting a best interest hearing on 25 January 2024. Henderson testified at the best interest hearing, stating his intent to adopt A.B. and describing the father-son relationship he had with A.B., which included coaching T-ball, taking A.B. on hunting and fishing trips, and picking him up from school. He stated that if he were to remain only a step-parent, nothing would change in his relationship with A.B.

The guardian ad litem, Rebecca Stone, offered her opinion that it was in A.B.’s best interest to terminate respondent’s parental rights, given the stability that A.B. experienced in Henderson’s home. Petitioner testified that termination would provide permanency for A.B., prevent him from having a “muddled sense of his life . . . ,” and allow her family to “move on with our life together.” Respondent expressed a recognition of the bond that A.B. and Henderson shared, but maintained his own desire to preserve his rights, while also expressing some hesitancy as to whether knowing who he was would be in A.B.’s best interest:

I don’t want to—I don’t want to confuse my little boy. I understand [A.B.]—his dad and I know that it can be stressful on kids to open up a new world that, like “oh, this

is your dad.” Even though he’s been playing that all along. So a part of me says yes, because I’m his dad and I’ve always wanted to have a—relationship with him. So. I don’t necessarily want to give my rights up, but I want to be in [A.B.]’s life ultimately but, you know, whatever may come out of this, come out of this. I feel like I’ve done all that I could up to this point.

Following this testimony, he stated that he believed that it could be a positive thing for A.B. if he were introduced “the right way.”

Following the testimony, the trial court found that “the competent and credible evidence supports that the Respondent/Father formed the intent to willfully abandon the minor child.” The court further found that, due to the lack of bonding and visitation between respondent and A.B., and considering the relationship and bond that existed between A.B. and Henderson, it would be in A.B.’s best interest to have respondent’s parental rights terminated. Respondent gave notice of appeal 15 April 2024.

II. Discussion

Respondent raises two issues on appeal. First, he argues that clear, cogent, and convincing evidence did not support the trial court’s findings that he willfully abandoned A.B., and the trial court erred in concluding that a ground existed to terminate respondent’s parental rights under N.C.G.S. § 7B-1111(a)(7); second, he argues that the trial court abused its discretion in determining it was in A.B.’s best interest to have respondent’s parental rights terminated. For the following reasons, we affirm the trial court’s order.

A. Evidence Supporting Willful Abandonment

“We review a trial court’s adjudication under N.C. [Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re J.T.C.*, 273 N.C. App. 66, 68 (2020) (alteration in original) (citation and internal quotation marks omitted), *aff’d per curiam*, 376 N.C. 642 (Mem) (2021). “‘If the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.’” *In re Z.D.*, 258 N.C. App. 441, 443 (2018) (quotation marks and citation omitted). When a trial court finds an ultimate fact, which is a finding between evidentiary facts and conclusions of law, it is “conclusive on appeal if the evidentiary facts reasonably support the trial court’s ultimate finding.” *State v. Fuller*, 376 N.C. 862, 864 (2021) (citations omitted). “We review *de novo* whether a trial court’s findings support its conclusions.” *In re Z.D.*, 258 N.C. App. at 443 (citation omitted).

There are eleven grounds on which a court may terminate parental rights, including 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.G.S. § 7B-1111(a)(7) (2024). “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 Adoption of Searle*, 82 N.C. App.

273, 275 (1986) (citation omitted). “Willful” means there was both purpose and deliberation. *Id.*

Respondent makes several arguments under his first issue. Respondent states that Findings of Fact 12, 22, 23, 34, and 35 were mischaracterized as findings of fact, when they should have been characterized as conclusions of law. These findings relate to the operation of § 7B-1111(a) and its applicability to the evidence presented in the case. We agree with respondent that these should have been classified as conclusions of law, and accordingly we review these findings de novo. *See In re Z.D.*, 258 N.C. App. at 443.

Respondent further challenges the following findings as unsupported by clear, cogent, and convincing evidence:

14.m. After the Petitioner/Mother texted that last statement on June 21, 2019, and for the 18 months prior to the filing of the Petition to Terminate Respondent/Father’s parental rights, and for the three years that followed the filing of the Petition, Respondent/Father has made no other efforts to participate in [A.B.]’s life.

14.q. The Respondent/Father said he “chose not to attend mediation” because he did not feel like they would be able to come together and to make any agreements.

14.r. The Respondent/Father always knew the child’s mailing address. He did not send cards, letters, or presents to the child or reach out in any capacity.

21. That the Respondent/Father’s actions demonstrate a willfulness to forgo all his responsibilities, obligations, as a parent. Further, he has withheld his love and affection from the child such as the child does not know him.

Finally, respondent challenges every finding the trial court made which found that he manifested a determination to abandon A.B., specifically the following findings in relevant part:

17. At all times after the Custody Order was entered and until the Petition was filed, the Respondent/Father had a court-ordered right to minimally have supervised visitation, but he chose not to exercise that visitation foregoing all parental rights and obligations owed to [A.B.].

19. The Respondent/Father's failure to take the responsibility to text, call, provide support or otherwise check on his child despite his belief he could not visit the child for over five years, is not consistent with someone wanting to have a relationship with his child, especially since the young mother was raising the child by herself.

21. [Respondent]'s actions demonstrate a willfulness to forego all his responsibilities, obligations as a parent. Further, he has withheld his love and affection from the child such as the child does not know him.

25. Even though the motion filed by the Petitioner/Mother in the custody case and her own words to him via text messaging indicated Respondent/Father could continue to see [A.B.] via supervised visitation, he chose not to see him. Respondent/Father chose not to attend court ordered, mandatory mediation. Respondent/Father chose not to send cards, presents, letters, diapers, other forms [of] support from the date of May 17, 2019, through the date of filing of the action on December 7, 2020. For longer than 6 months, the Respondent/Father chose to abandon his child.

33. The Respondent/Father's behavior in this matter demonstrates that his failure to maintain at least some contact with the minor child within the six months prior to the filing of this petition[] was his conscious choice, in that his mental state did not preclude him from reaching out in

some way to at least inquire about the minor child and that his failure to do so did display a purposeful, deliberate intent to forego all parental duties.

In challenging these findings of fact, respondent presents evidence that he asserts “is clear and convincing evidence that he never willfully intended to abandon A.B.” Even with the contradictory evidence respondent presented, there was sufficient clear and convincing evidence supporting each of these findings of fact. Thus, the trial court did not err in finding that respondent had willfully abandoned A.B.

Respondent challenges Finding 14.m by arguing that “[e]fforts in response to the TPR petition constitute efforts to participate in [A.B.]’s life.” This is not a correct reading of the law. If this argument were correct, every TPR action in which a respondent participated in the litigation to oppose termination would end in favor of the respondent. The court properly found that respondent had made no efforts to participate in A.B.’s life following the 2019 text messages.

Respondent challenges Finding 14.r in two ways. He states that there was no evidence that he knew where petitioner moved after she left Terry’s Gap Road in April 2021. While this may be true, the operative time frame for § 7B-1111(a) is the six months prior to filing, which in this case was June to December 2020. Respondent also states that he believed petitioner had moved earlier than April 2021. However, he does not provide a date as to when he thought this move occurred. In fact, in his response to the TPR, which was filed February 2021, he wrote, “I do not have any contact information for my son’s mother. . . . The mother resides right down the road

from the residen[ce] I lived at for 5 years before moving over a year ago.” This response indicates that as of February 2021, he knew that A.B. and petitioner had not moved. Thus, while this finding of fact may not be accurate for the time period following April 2021, it was accurate for the operative time frame that is to be considered by the trial, and for one year before that.

Concerning the findings of fact that respondent willfully abandoned A.B., there was ample evidence from which the court could draw this conclusion. Respondent did not contact or visit either A.B. or petitioner in any way following a text exchange on 21 June 2019. Respondent attempts to contextualize his behavior in a number of ways, including that his attorney advised him to end visitations after he failed his drug test, despite the visitation order failing to make his visits contingent on passing this test. However, at no point does respondent explain his inaction in light of petitioner’s text message to him that she was “not taking away his visitation.” While this exchange occurred before the six-month window of the TPR, actions before this window “are also relevant in interpreting whether his conduct during the window signified willful abandonment.” *In re E.B.*, 375 N.C. 310, 320 (2020) (citation omitted). This message controverted his attorney’s alleged advice and was sufficient to put respondent on notice that petitioner would allow continued visitation.

Respondent next argues that his actions need to be viewed in light of “the parties’ often acrimonious relationship,” yet fails to provide any evidence that their relationship was acrimonious at the time respondent cut off communication with

petitioner and A.B.; to the contrary, petitioner wanted him to continue visitation. Respondent cites a hypothetical fear of receiving a trespassing charge by showing up to petitioner's home unannounced due to a "No Trespassing" sign in the yard. However, this sign had been present at the house for many years before A.B. was born, and respondent failed to substantiate his fear of criminal charges.

At no point does respondent argue that he was advised by his attorney that he could not contact petitioner or A.B. via phone, or that he could not send letters or packages to them, yet he also failed to take any of these actions. He states that "at some point" he lost petitioner's phone number, but does not describe any way he attempted to recover that number, despite it being the only way (other than personally visiting, which he declined to do) he could keep in touch with his child. He left no cards or presents for his son, despite petitioner living in the same house until April 2021. He testified that "you can't fit 30 diapers in the mailbox," and that he did not send any money because there was no way to communicate with petitioner that he was going to send money. This explanation is ultimately flawed, however, since respondent does not explain why he could not have left products other than diapers with petitioner, such as a holiday card.

Finally, respondent takes issue with the court's failure to make findings that it did not find his testimony to be credible, given that this evidence was material. A trial court is required only to make findings of fact that are material to the dispute. *In re A.E.S.H.*, 380 N.C. 688, 693 (2022). The primary testimony the court found not

to be credible was respondent's contention that he did not have the requisite intention to abandon his son. However, intention is a state of mind that can only be proven, in most cases, through actions, and the actions that respondent took are, for the most part, not in dispute. Thus, the court's ultimate finding that he possessed the intention to abandon his son was in and of itself a finding that the statements concerning his own intentions were not credible.

Therefore, there was clear, cogent, and convincing evidence that supported the trial court's conclusions of law that respondent willfully abandoned A.B.

B. Best Interest Determination

"The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed solely for abuse of discretion." *In re A.U.D.*, 373 N.C. 3, 6 (2019) (citation omitted). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285 (1988). "We review the trial court's dispositional findings of fact to determine whether they are supported by competent evidence." *In re J.J.B.*, 374 N.C. 787, 793 (2020). "Dispositional findings not challenged by respondents are binding on appeal." *Id.* (citation omitted).

Once grounds exist for terminating a parent's rights vis-a-vis the child, the trial court must determine whether the termination is in the best interest of the child, using the following six criteria:

- (1) The age of the juvenile.

- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a) (2024).

The trial court made findings of fact related to criteria (2)-(5) finding that Henderson wanted to adopt A.B.; that termination would provide permanency given that A.B. did not know, nor had bonded with, respondent; that A.B. and Henderson were bonded through Henderson's presence "for all [A.B.]'s mile markers"; and that A.B. called Henderson "Dad," with Henderson taking care of all A.B.'s needs when petitioner was unable, providing for A.B. and petitioner, and that petitioner, Henderson, and A.B. considered themselves to be a family.

Respondent challenges Finding of Fact 36(m) as unsupported by the evidence. There, the court found that it was in the best interest of A.B. to have respondent's rights terminated, given A.B.'s lack of bonding with respondent over the past five years, thereby lending permanency to A.B.'s life. Respondent points to testimony from Henderson stating that nothing would change in A.B.'s life if he were to be adopted, and that respondent is capable of having a relationship with A.B. that would be beneficial to the child. Respondent also points to evidence the trial court ignored, such as his maturation and taking on the responsibility of multiple children.

We first address respondent's contention that the trial court improperly ignored evidence of his maturity and potential to be a positive influence in A.B.'s life. The trial court need not make findings on all the evidence presented, but is required to address only the pertinent issues. *In re J.A.A.*, 175 N.C. App. 66, 75 (2005) (citation omitted). Here, respondent's ability to establish a relationship with A.B. in the future was not primarily at issue. The issue at the heart of the best interest analysis was whether providing A.B. permanency through adoption in light of his lack of relationship with respondent was in his best interest. The trial court determined that, despite the evidence given about respondent's maturity, it would be better for A.B. to have a permanent relationship with Henderson. Respondent testified that having a relationship with A.B. "could be a positive thing." Regardless of this statement's accuracy, a permanent plan cannot be built on unsure statements of future positivity.

We next address respondent's contention that adoption is not necessary to create a permanent, stable home with Henderson and petitioner. Respondent misconstrues the role that adoption plays in a child's life and downplays the benefits, which are numerous. Adoption confers permanent legal benefits and protections that currently do not exist between A.B. and Henderson. While Henderson has every intention of providing the same stable home for A.B. in the future, circumstances both within and outside Henderson's control could warrant the need for protections A.B. does not yet enjoy. Further, as petitioner testified, adoption will clarify A.B.'s sense

IN RE: A.R.B.

Opinion of the Court

of family. Henderson is the only man A.B. has ever truly recognized as a father, and adoption would allow the law to reflect A.B.'s own life experience. Thus, we cannot find that the trial court's decision to terminate respondent's parental rights to allow for Henderson's adoption was the result of an unreasonable or arbitrary decision.

III. Conclusion

For the foregoing reasons, we affirm the trial court's order.

AFFIRMED.

Judges COLLINS and STADING concur.

Report per Rule 30(e).