

The Cherokee Supreme Court

EBCI
CHEROKEE SUPREME COURT
CHEROKEE, NC
2024 OCT 18 AM 11:14

Eastern Band of Cherokee Indians
Qualla Boundary, Cherokee, North Carolina

FILED

IN THE MATTER OF: A.B.

FILE No. CSC 23-01

Gary E. Kirby, Kelly Hebrank, and Sybil Mann, for Appellee Grandmother and Appellee Family Safety Program.

Shira Hedgepeth, for Appellant Father.

SAUNOOKE, Chief Justice.

FACTS¹

A.B. (“Abby”)² was born in September 2012 in Cherokee County, North Carolina. Abby is an enrolled member of the Eastern Band of Cherokee Indians (“EBCI”).

Abby’s mother (“Mother”) was incarcerated at the time of Abby’s birth and authorized Abby’s maternal grandmother (“Grandmother”) to sign discharge papers for and transport Abby from the medical center following her birth. Mother remained incarcerated for the first three years of Abby’s life, and Abby resided with Grandmother continuously through the time that the EBCI Department of Human Services (“Family Safety”) filed the initial petition in this matter. Grandmother, whom Abby calls “Mom,” was Abby’s primary caregiver since her discharge from

¹ The appellant in this case filed notices of appeal from multiple orders in the proceedings below. Those appeals have been consolidated for review under a single file number, CSC 23-01.

² The pseudonym “Abby” is used throughout this opinion to protect the minor’s privacy and for ease of reading.

the hospital. Grandmother believed she had, but in fact did not have, legal custody of Abby in the ensuing years.

Although Abby's Father ("Father") knew of the pregnancy and went to the hospital on the day of Abby's birth, he left because he was impaired by illegal substances. Over the first eight years of Abby's life, Father did not visit Abby and only saw her from time to time in the community.

In November 2012, Grandmother, through Child Support Enforcement, filed an action against Father seeking support for Abby. Service was not made until June 2013. At an August 2013 hearing on Motion to Establish Paternity and Child Support, a DNA test was ordered, but Father failed to appear for testing. Following Father's subsequent failure to comply with an Order to Show Cause, Father was arrested. Only after his arrest did he submit to the DNA test, which established his paternity in April 2014. Father did not appear at the October 2014 hearing to establish support. Support was to begin by garnishment of Father's per capita distribution in January 2015. At no time in this action did Father ask for visitation or contact with Abby, nor did he seek custody.

Abby was eight years old when Family Safety became involved with her family in December 2020, following the birth of Abby's sister N.B. ("Nora").³ At the time of Nora's birth, Mother tested positive for controlled substances and subsequently admitted to Family Safety that she was a regular intravenous methamphetamine user. In January 2021, Mother agreed to participate in a behavioral health and substance use assessment and was recommended to attend substance abuse treatment classes, but she failed to attend those classes. Family Safety's

³ The pseudonym "Nora" is used throughout this opinion to protect the minor's privacy and for ease of reading. Nora and Abby do not share the same father, and Nora is not the subject of this appeal.

maltreatment investigation was transferred to in-home services through the Family Integrity Program the same month to assist Mother's efforts to create a safe home for Abby and Nora.

In February 2021, Family Safety, Mother, and Grandmother created a "Family Safety Case Plan" setting out specific goals to create a safe home for Abby and Nora. However, over the next several months, Mother failed to meet a majority of the goals set out in the case plan, particularly in that she failed to obtain housing through gainful employment or use her funds to repair property she owned that was in need of repair; she failed to obtain and maintain stable employment so that she would have a source of income to provide for Abby and Nora; she failed to produce negative drug screens consistently and stopped responding to her case worker's requests to participate in drug screens; she failed to attend behavioral health and/or substance abuse treatment meetings; and she failed to maintain weekly contact with her case worker.

On 11 August 2021, after more than eight months of involvement with the family, Family Safety filed a Child Maltreatment Petition alleging Abby and Nora⁴ to be neglected and drug-endangered. As to neglect, the petition alleged that Abby did "not receive proper care, supervision, or discipline from the child's parent, guardian, custodian, or caretaker," Abby was a "Drug Endangered Child[]" as defined in C.C 78-101(a)(18)," and Abby had "not been provided proper care pursuant to an intervention plan or other plan developed by the Department to which the parent, guardian, custodian, or caretaker has not substantially complied." As to drug endangerment, the petition alleged that Abby was "at substantial risk of suffering harm as a result of parents, guardian, custodian or caretaker's drug misuse, abuse, possession, manufacturing, or distribution including but not limited to the risk created when the parent, guardian, custodian or caretaker's drug use interferes with the caretaker's ability to provide proper supervision or a safe

⁴ Although the lower court proceedings dealt with both Abby and Nora, the discussion of facts in this opinion focuses primarily on Abby, as she is the sole child at issue in the instant appeal.

and nurturing environment for the child.” The same day, the trial court entered a protective custody order placing Abby and Nora in the custody of Family Safety and permitted Family Safety to leave the sisters in Grandmother’s home.

On 18 August 2021, the trial court held a hearing to determine the need for continued protective custody. Mother was not present for the hearing, but Father and Grandmother appeared. At the hearing, Father agreed that he would work with Family Safety, obtain an assessment, and begin the slow process of entering Abby’s life. Following the hearing, the trial court concluded that grounds for continuing protective custody existed.

Following multiple hearings in 2022⁵, the trial court entered a Permanency Planning Order on 15 September 2022. Of note, that order stated:

It is ORDERED that Grandmother, Father, and Mother shall cooperate and develop a schedule of placement between Grandmother and Father and include in the schedule visitation with Mother. This schedule shall be in writing, signed by Grandmother, Father, and Mother, filed with the Court with copies to Family Safety and the Guardian no later than fourteen (14) days from the date of this Order. Should the parties fail to cooperate and establish this schedule as directed, then this matter shall be put back on before the Court. At that hearing, all parties shall be given an opportunity to offer testimony or other evidence. The Court will then either establish a schedule of placement and visitation, or, in the alternative, proceed to put in effect the concurrent plan of custody with a court-ordered individual as stated above.

Father filed a notice of appeal of this order on 21 September 2022.

Grandmother subsequently filed a Motion in the Cause for Review, which the court heard on 19 October 2022. Following the hearing, on 6 December 2022, the trial court filed its Order on Respondent Grandmother’s Motion, in which the court made several findings of fact concerning Father. Among them, the court found that Father, without notice to any party, enrolled Abby in

⁵ On 22 July 2022, Father filed notice of appeal from a 25 June 2022 order on a disposition hearing.

the Swain County School System, even though she had previously been attending Cherokee School. Father challenged the social worker whenever she attempted to facilitate Grandmother's placement time, so no placement occurred from mid-August through the time of the hearing, and Father consistently expressed that he was against shared custody with Grandmother. Father on multiple occasions made unsubstantiated allegations that Grandmother caused bruising on Abby, even though those bruises were determined to be old and not caused by abuse. Father continued to test positive for THC (although he claimed to only smoke it on Tribal lands and not around his children) and had tested positive for high levels of methamphetamine in September 2021, after the initial petition was filed.

The court further found that despite its directive in the 15 September 2022 Permanency Planning Order that Grandmother, Father, and Mother develop a schedule of placement and file it with the Court no later than fourteen days from the date of the order, Father had failed to do so:

On September 20, 2022, Grandmother filed her proposed schedule which included schedule of visitation with Mother. Father has submitted NO proposal or response. Earlier than September 15, Father said he wasn't doing anything until Jackson County DSS report was completed. This case was closed by Jackson County DSS on September 20, 2022, with a finding that the allegations were "unsubstantiated," and no further services were needed. This left Father with 9 days before the deadline set forth in the court order. Respondent Father did not submit any proposal by the deadline of September 29, 2022. To the date of this Order, Respondent Father has failed to submit any proposal or response as ordered by this Court

Ultimately, the trial court concluded that "by the cumulative actions and inactions" of Father from Abby's birth until after service of the petition in the case, Father had waived his constitutionally protected status as her parent. The court granted custody of Abby to Grandmother but allowed Father visitation with Abby. Having achieved a permanent plan for Abby, the trial court also stated that there was no need for continued intervention on behalf of Abby, relieved

Family Safety from further obligation in the matter, and converted the case to a civil custody action, in which any subsequent related proceedings would be between Grandmother, Mother, and Father.⁶ Father filed notice of appeal from the court's order on 7 December 2022. This and his previously filed notices of appeal in the same matter have been consolidated for appellate review.

STANDARD OF REVIEW

On appellate review, this Court is “bound by the laws, customs, traditions, and precedents of the Eastern Band of Cherokee Indians. If there is no applicable Cherokee law, [we] look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance.” C.C. § 7-2(d) (2000). While Chapter 7B of the Cherokee Code applies to child maltreatment cases, relevant case law in this jurisdiction is sparse, and we therefore look to North Carolina case law for guidance on the questions presented.

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.” *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984). Importantly, “[w]here no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The trial court's conclusions of law are reviewable de novo. *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citing *In re S.N.*, 194 N.C. App. 142, 146, 669 S.E.2d 55, 59 (2008), *aff'd per curiam*, 363 N.C. 368, 677 S.E.2d 455 (2009)).

ANALYSIS

I

⁶ We note that the trial court has not terminated Father's parental rights, and nothing in the trial court's order prevents Father from pursuing his relationship and visitation with Abby or filing a civil custody action.

On appeal, both in his principal appellate brief and in his Motion to Set Orders Aside, Father argues that the trial court lacked jurisdiction in the proceedings below. Father asserts that Family Safety “masqueraded” the action “for the sole purpose of obtaining custody of A.B. for the Maternal Grandmother.” According to Father, Abby could not have been a “maltreated” child because Grandmother provided appropriate care for Abby—there were no allegations in the petition that Grandmother had caused Abby to be abused, neglected, or dependent. Hence, Abby could not have been “maltreated” as defined under C.C. § 7B-101, and the trial court thus lacked jurisdiction under C.C. § 7B-200(b). Father’s argument is not based in law and is therefore without merit.

At the outset, we note that Cherokee Code § 7B-101(a)(8) defines “child maltreatment,” in pertinent part, as a “drug endangered child as defined in 7B-101(a)(18)” or a “neglected child as defined in 7B-101(a)(23).” A “neglected child” is:

A child who does not receive proper care, supervision, or discipline from the child’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the child’s welfare; or is a drug endangered child as defined in this chapter; or has not been provided proper care pursuant to an intervention plan or other plan developed by the Department to which the parent, guardian, custodian or caretaker has not substantially complied; or who has been placed for care or adoption in violation of law. In determining whether a child is a neglected child, it is relevant whether that child lives in a home where another child has died as a result of suspected abuse or neglect or lives in a home where another child has been subjected to abuse or neglect by an adult who regularly lives in the home.

C.C. § 7B-101(a)(23). Cherokee Code § 7B-200(b) provides that that court “shall have jurisdiction over the parent, guardian, custodian, or caretaker of a child who has been adjudicated as maltreated due to being abused, neglected, drug endangered or dependent, provided the parent, guardian, custodian, or caretaker has (i) been properly served with summons pursuant to C.C. § 7B-406, (ii)

waived service of process, or (iii) automatically becomes a party pursuant to C.C. § 7B-401.1(c) or (d). All parties shall be subject to orders of the Court specific to dispositional services and conditions required for child safety and wellbeing.”

As to the role of Family Services, Cherokee Code § 7B-401.1(a) provides that “[o]nly the director of human services or the director’s authorized representative may file a petition alleging that a child is maltreated under this chapter. The petitioner shall remain a party until the Court terminates its jurisdiction in the case.”

Cherokee Code § 7B-503 sets out the criteria for child protective custody orders. Pursuant to § 7B-503(b), when a request is made for custody of the child to be transferred to the department, the trial court must first consider physical placement of the child with the child’s parent, relative, guardian, custodian, or other responsible adult. An order for child protective custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, there are no other reasonable means available to protect the child, and any of several conditions apply, including but not limited to:

(3) The child is exposed to a substantial risk of physical injury, substantial emotional harm or developmental delay or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury, harm or maltreatment.

(4) Parent, guardian, custodian or caretaker has failed to provide, or is unable to provide, adequate supervision or protection and the child is exposed to a substantial risk of physical injury, emotional harm or developmental delay, or sexual abuse as a result of the lack of supervision.

Id. § 7B-503(b)(3)-(4). When the trial court obtains jurisdiction over a child, jurisdiction “shall continue until terminated by order of the Court or until the child reaches the age of 18 years or is otherwise emancipated, whichever occurs first.” C.C. § 7B-201(a).

In its Order for Protective Custody, the trial court concluded, as to Abby, that “[t]he parent, guardian, custodian, or caretaker has failed to provide, or is unable to provide, adequate supervision or protection and the children is [sic] exposed to a substantial risk of physical injury, emotional harm or developmental delay, or sexual abuse as a result of the lack of supervision.” The trial court laid out extensive findings of fact, particularly concerning Mother, explaining, in sum, that Abby had lived all her life with Grandmother, and Mother had been incarcerated at the time of Abby’s birth and for much of her life. Family Safety became involved with the family when Nora was born, after Mother had tested positive for drugs and admitted to being a regular methamphetamine user. Family Safety worked with Mother and Grandmother to set up a Family Safety Case Plan in February 2021 with several goals. However, Mother failed to meet a majority of her goals. The court noted, among other things, that Mother failed to obtain housing through gainful employment, failed to obtain and maintain stable employment, so that she would have a source of income to provide for minor Abby, failed to produce negative drug screens consistently and stopped responding to her case worker’s requests to participate in drug screens, failed to attend behavioral health and/or substance abuse treatment meetings, and failed to maintain regular contact with her case worker. These facts, among others, led the trial court to determine that the unsafe conditions that led to Abby’s placement with Grandmother had not been addressed, despite the reasonable efforts Family Safety had made in the several months preceding the filing of the petition.

Because Father has not challenged these findings, they are binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. These findings amply support the trial court’s conclusion that Abby was a maltreated child, and Father simply has not shown that Family Services or the trial court acted inconsistently with their respective responsibilities set out in Chapter 7B. Therefore,

we hold that the trial court did not err in exercising jurisdiction in this matter. Father's argument as to this issue is without merit and his Motion to Set Orders Aside is denied.

II

Next, we turn to Father's argument concerning the sufficiency of the petition's factual allegations about him. Father points to *In re D.C.*, 183 N.C. App. 344, 350, 644 S.E.2d 640, 643 (2007) (citation and quotation marks omitted), which states generally that "[w]hile there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue." Father asserts that he was given "no notice of any acts preventing him from taking care and control of [Abby]," that the petition is "totally void of any factual allegations" against him, and that since there were no allegations specific to him in the petition, the trial court could not make findings of fact and conclusions of law to maintain non-secure custody of Abby.

Father's argument is without merit, as he ignores the fundamental point that a child maltreatment petition's focus is the status of the *child*, not the conduct of a particular parent. Father has not cited any authority in support of his position that the petition needed to include specific allegations that *he* was responsible for the neglect or drug endangerment, and indeed, case law from the North Carolina Court of Appeals shows the opposite. In *In re A.L.T.*, 241 N.C. App. 443, 451, 774 S.E.2d 316, 321 (2015), the North Carolina Court of Appeals explained that where a trial court's findings of fact supported its legal conclusions that the juveniles were neglected, "the lack of findings in the adjudication order regarding Mother's fault or culpability in contributing to the adjudication of neglect is immaterial." This is because "the determinative factors are the circumstances and conditions surrounding the *child*, not the fault or culpability of the parent." *Id.* (quoting *Montgomery*, 311 N.C. at 109, 316 S.E.2d at 252) (emphasis added). See also *In re*

S.C.R., 217 N.C. App. 166, 170, 718 S.E.2d 709, 713 (2011) (determining that “the trial court erred when it dismissed the petition against the father on the grounds that he was not involved in any of the actions enumerated in the Petition” because “[a]djudication and disposition proceedings do not involve the culpability regarding the conduct of an individual parent”) (citation and quotation marks omitted); *In re J.S.*, 182 N.C. App. 79, 86, 641 S.E.2d 395, 399 (2007) (“The purpose of the adjudication and disposition proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent. The question this Court must look at on review is whether the court made the proper determination in making findings and conclusions as to the status of the juvenile.”).

We agree with the guidance provided by North Carolina and apply it here. The petition in this case clearly put Father on notice that Abby was alleged to be neglected and drug-endangered. Therefore, we overrule Father’s contention concerning the adequacy of the Petition’s allegations.

III

Father next contends that Grandmother lacked standing below. As to the initial petition, C.C. § 7B-401.1(e) provides that a “caretaker shall be a party only if (i) the petition includes allegations relating to the caretaker, (ii) the caretaker has assumed the status and obligation of a parent, or (iii) the Court orders that the caretaker be made a party.” In this case, Grandmother, Abby’s caretaker, was properly a party in the maltreatment petition because the petition included allegations relating to her, and she had assumed the status and obligation of Abby’s parent.

As to the custody issue, the Cherokee Code provides that except as set forth elsewhere in the code, the parties to child custody proceedings shall have all rights provided by the laws of North Carolina. C.C. § 50-13. “The court shall look to the laws of North Carolina for guidance in resolving any family matter not specifically governed by the Cherokee Code or established

Cherokee customs and traditions.” *Id.* N.C. Gen. Stat. § 50–13.1(a) grants grandparents standing to seek custody at any time. *Wellons v. White*, 229 N.C. App. 164, 174, 748 S.E.2d 709, 717 (2013). See N.C. Gen. Stat. § 50–13.1(a) (providing standing to “relative, or other person . . . claiming the right of . . . custody”). To receive custody under N.C. Gen. Stat. § 50–13.1(a), a grandparent must prove that the parent is unfit or has taken action inconsistent with her parental status in order to gain custody of the child. *Eakett v. Eakett*, 157 N.C. App. 550, 553, 579 S.E.2d 486, 489 (2003).

Very much like the grandmother plaintiff in a similar North Carolina case, Grandmother here “is the maternal grandmother” of Abby and “clearly has standing to institute an action for custody of her.” *Drum v. Drum*, 284 N.C. App. 272, 275, 874 S.E.2d 916, 920 (2022). Grandmother raised Abby “for the past eight years” from birth to the initiation of the action. *Id.* Consistent with the guidance provided in *Drum*, we hold that Grandmother “clearly ha[d] standing,” and Father’s argument is overruled. *Id.*

IV

Next, we turn to Father’s argument that the trial court erred in finding that he waived his constitutionally protected right to be a parent. “[A] trial court’s determination that a parent’s conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence.” *Drum*, 284 N.C. App. at 275, 874 S.E.2d at 921 (quoting *Adams v. Tessener*, 354 N.C. 57, 63, 550 S.E.2d 499, 503 (2001)). “[T]he trial court’s findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary.” *Id.* at 275-76, 874 S.E.2d at 921 (quoting *Owenby v. Young*, 357 N.C. 142, 147, 579 S.E.2d 264, 268 (2003)). “Whether those findings of fact support the trial court’s

conclusions of law is reviewable *de novo*.” *Id.* at 276, 874 S.E.2d at 921 (quoting *Hall v. Hall*, 188 N.C. App. 527, 530, 655 S.E.2d 901, 904 (2008)).

The Supreme Court of North Carolina has held that a natural parent may lose his constitutionally protected right to the control of his children “only upon a showing that the parent is unfit to have custody *or* where the parent’s conduct is inconsistent with his or her constitutionally protected status.” *David N. v. Jason N.*, 359 N.C. 303, 306, 608 S.E.2d 751, 753 (2005) (quoting *Adams*, 354 N.C. at 62, 550 S.E.2d at 503).

Father first argues that he was not proven unfit, pointing to evidence and findings of fact from prior proceedings in effort to demonstrate that he was fit to have custody. Father’s argument disregards the applicable standard of review, but more importantly, this argument bears no weight because his fitness to have custody was not the trial court’s basis for its decision. Instead, the trial court concluded that Father waived his constitutionally protected status as Abby’s parent. Therefore, we disregard this argument concerning Father’s fitness and turn to his argument concerning the waiver of his constitutionally protected status.

Father also argues that he has not waived his constitutional right to be a parent. In doing so, he in large part reargues specific evidence presented to the trial court, which he believes tends to show that he has not waived his constitutional right to parent. Here again, however, Father’s argument disregards the applicable standard of review and is thus unpersuasive.

Father goes on to argue that the trial court erred in concluding that his cumulative actions and inactions demonstrated that he had waived his right to be a parent. The trial court’s conclusion of law stated:

This Court determined by clear, cogent, and convincing evidence, that by the cumulative actions and inactions of the Respondent beginning on the date of [Abby’s] birth . . . , and continuing until

after service of the petition in this case, Respondent Father waived his constitutionally protected status as [Abby's] parent.

The court made several findings of fact and conclusions of law (which it expressly, alternatively adopted as findings of fact if they constituted such⁷) in support of this conclusion.

The trial court made several pertinent "conclusions of law," which this appellate Court reviews as findings of fact:

3. At this hearing, the Respondent Father, through counsel, again argued that Father was entitled to custody because parents have a constitutionally protected right to custody of their children. The Court has considered this argument at length in the Order of September 15, 2022. (See Order, Conclusion of Law beginning with Paragraph 10, page 6). The Court will not set forth the matter out here verbatim but incorporates this herein by reference. Father knew of the pregnancy, even though Mother was in custody at the time. He even knew when Mother was transported to the hospital for [Abby's] birth. He went to the hospital on that birth date, but left because he was impaired by illegal substances. He did very little over the ensuing years to see [Abby] or participate in her life. One of Father's contentions is that he has paid support for a number of years. The Court has already taken judicial notice of court file number CV12-571, dealing with this issue. A deeper review of this file reveals less than compelling circumstances and paints a dark picture.

On November 19, 2012, Grandmother, through Child Support Enforcement, filed an action against Father seeking support for [Abby].

This Summons and Complaint were not served. An Alias and Pluries Summons was issued on January 18, 2013. This was not served. Another Alias and Pluries Summons was issued on March 14, 2013. Once again, no service was obtained. Another Alias and Pluries Summons was issued on April 16, 2013. Again, service was not obtained. Yet another Alias and Pluries Summons was issued

⁷ Many of the trial court's "conclusions of law" should be reclassified as findings of fact, and this Court reviews them as such on appeal. See *In re J.O.D.*, 374 N.C. 797, 807, 844 S.E.2d 570, 578 (2020) (where trial court labeled conclusion of law as finding of fact, stating that findings of fact which are essentially conclusions of law will be treated as such on appeal); *In re J.T.C.*, 273 N.C. App. 66, 73, 847 S.E.2d 452, 458 (2020) ("The trial court's classification of its own determination as a finding or conclusion does not govern our analysis."), *aff'd per curiam*, 376 N.C. 642 (2021); *N.C. State Bar v. Key*, 189 N.C. App. 80, 88, 658 S.E.2d 493, 499 (2008) ("[C]lassification of an item within [an] order is not determinative, and, when necessary, the appellate court can reclassify an item before applying the appropriate standard of review.").

on June 3, 2013. Finally, service was made on Respondent Father on June 7, 2013.

A notice of Motion to Establish Paternity and Child Support was mailed to Respondent Father on June 10, 2013, for a hearing scheduled for August 12, 2013. At that hearing, DNA paternity testing was ordered.

Respondent Father failed to appear for testing, and an Order to Show Cause was issued. Respondent Father failed to comply with this order and an Order for Arrest was entered by the Honorable Danny Davis, Tribal Judge, for Respondent Father to be arrested and held until he complied.

Only then did Respondent Father submit to DNA testing on April 14, 2014. Two days later, on April 16, 2014, an Order was entered rescinding the Order of Arrest.

Results of the DNA test were completed on April 23, 2014, finding the Respondent Father was [Abby's] father.

Finally, a hearing was conducted on October 13, 2014, to establish support. Respondent Father did not appear and was not represented by counsel. An Order of Paternity and Support was signed on November 3, 2014.

Support was to begin by garnishment of Respondent Father's per capita distribution on January 1, 2015, over 2 years and 3 months after [Abby's] birth, and over 2 years since the filing of the action for support. Respondent Father signed an Affidavit of Paternity on April 30, 2014. Respondent Mother had signed this same Affidavit of Paternity shortly after [Abby's] birth.

Twice thereafter, Father moved for reductions in support because of the birth of other children. His motions were allowed. At no time in this action did Father ask for visitation or contact with [Abby], nor did he seek custody. The Court further takes judicial notice of file number CV12-567. Therein, Father filed a request for a redirection of child support payment from Mother [] to him, claiming he has "placement" of [Abby]. This matter is pending and has not yet been heard.

....

5. The Court recognizes that prior to service on Respondent Father of the petition in this matter, he had little to no involvement in

[Abby's] life. After service, he has begun to be involved, starting visitation and beginning overnight visits in the spring of 2022. Many of his actions since then have been troublesome.

The trial court also adopted and incorporated its findings of fact and conclusions of law from its 15 September 2022 Permanency Planning Order, which included, in pertinent part:

27. Respondent Father has six (6) biological children. Respondent Father testified that in 2019, he went to Legal Aid and inquired about seeking a relationship with [Abby] and another child by a different mother (that child is not involved in this matter). An action was filed as to the other child. However, Father testified that the matter was settled by him not having any contact with this child, and in return having no obligation to pay child support. Respondent Father did not file anything regarding [Abby].

....

40. Grandmother had [Abby] in the home continuously from shortly after her birth until the filing of the petition in this matter. Grandmother has been responsible for [Abby's] day-to-day care and upbringing for approximately 8 years, 9 months, and 22 days plus the vast majority of the one year from August 11, 2021 until the present. For nearly ten (10) years, Grandmother has been [Abby's] de facto parent.

....

vi. The record contains no evidence that Respondent Father had any substantial or meaningful involvement in the life of [Abby], other than the child support being deducted from his per capita distribution. During this entire time, Grandmother was the primary care provider for . . . [Abby].

....

xxvii. At no time has Respondent Father filed anything in this child support file or elsewhere, asking that he be allowed contact with [Abby].

....

xxix. During the first nine-plus years of [Abby's] life, Respondent Father has had little to no contact with [Abby]. Even on the limited number of occasions when they did see each other in public places, it was [Abby] who initiated contact by going to hug Respondent Father.

As noted above, Father concentrates his argument on reasserting the evidentiary points in his favor, particularly his child support payments. He does not, on appeal, contend that the aforementioned findings of fact are not supported by the evidence. Since Father has taken no

exception to these findings, they are presumed to be supported by competent evidence and are binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

We next turn to whether the trial court's findings support its conclusion that Father waived his constitutional right to be a parent. As noted, the *Drum* case bears meaningful similarity to this case. In *Drum*, the North Carolina Court of Appeals held that the defendant father acted inconsistently with his constitutionally-protected status by ceding care to the plaintiff grandparent for years, "all while making no affirmative efforts to visit or gain custody of" his child. *Drum*, 284 N.C. App. at 280, 874 S.E.2d at 922. The father in that case "showed no real interest in" the child until the proceedings began. *Id.* Since then, although the defendant had kept up with support payments, alleviating prior arrearages, and had visited the child regularly and taken more of an interest in her life, these positive changes did "not make up for the years of safe and responsible child-rearing [the grandparent] ha[d] provided for [the child] in Defendant's absence." *Id.* The Court of Appeals noted that the defendant had "acted inconsistently with his constitutionally-protected status as a parent" in that his contact with the child "was sporadic and minimal between the time she went to live with Plaintiff until these proceedings began." *Id.* at 278, 874 S.E.2d at 921. Further, "[t]he fact he did not know or was ignorant that [the grandparent] was the primary caregiver and raising [the child] is a clear withholding of his 'presence, his love, his care, the opportunity to display filial affection, and wilfully [sic] neglect[ed] to lend support and maintenance.'" *Id.* (citation omitted). The grandparent was found to have "performed the daily and brunt work of raising [the child], while . . . [the defendant father] lived his life on the road without continuous regard for or checking in on [the child's] wellbeing." *Id.*

Like the father in *Drum*, Father here had "sporadic and very minimal" contact with Abby prior to the initiation of these proceedings. The fact that he "did not know or was ignorant," that

Grandmother did not have legal custody of Abby is not a significant distinction, particularly since the trial court found that at no time in this action did Father ask for visitation or contact with or seek custody of Abby. We apply the guidance in *Drum* and hold that the trial court did not err in finding that Father waived his constitutionally protected right to be a parent.

V

Finally, Father contends the trial court erred in finding that Abby's best interest is served by being in the custody of Grandmother. "The standard of review that applies to an assignment of error challenging a dispositional finding is whether the finding is supported by competent evidence. A finding based upon competent evidence is binding on appeal, even if there is evidence which would support a finding to the contrary." *In re B.C.T.*, 265 N.C. App. 176, 185, 828 S.E.2d 50, 57 (2019) (quoting *In re B.W.*, 190 N.C. App. 328, 332, 665 S.E.2d 462, 465 (2008)). For challenged conclusions of law, the Court determines whether the trial court's facts support the challenged conclusion. *Id.* The Court reviews the trial court's determination as to the best interest of the child for abuse of discretion. *Id.* An 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. *In re L.A.J.*, 381 N.C. 147, 149, 871 S.E.2d 697, 699 (2022).

Here, Father again disregards the applicable standard of review by rearguing points in his favor, such as findings of fact from previous orders and testimony in hearing transcripts. Father also asserts that the trial court's custody order "bears no findings of fact that the action of the Court is in the best interest of the child but appears to be a punishment of Respondent Father."

Contrary to Father's contention, the trial court made extensive findings of fact supporting its conclusion concerning "the best plan of care to achieve a safe, permanent home" for Abby. In its 15 September 2022 Permanency Planning Order, which it incorporated into the 6 December

2022 Order on Respondent Grandmother's Motion, the court considered Cherokee custom and tradition, consistent with Cherokee Code § 7-2. The court noted that "[h]istory, culture, custom, and practice is extremely important to the Cherokee Tribe," and went on to find the following:

e. The Court also points out recently added Code §50-12(g), "There is a rebuttable presumption consistent with Cherokee culture (emphasis added), that it is in the best interest of a child to have the love and support of grandparents through reasonable contact with a grandparent." The Court recognizes that this section applies to Chapter 50 actions, but it states the Tribal philosophy that grandparents are an important influence on children as to their wellbeing and Cherokee culture.

f. The passing down of customs, culture, and traditions are of extreme importance to the Cherokee people. This importance cannot be overstated.

g. This issue is vital to the facts of this matter. For almost all of [Abby's] life—for nearly all of the past decade—both parents, both Respondent Mother and Respondent Father—have abdicated their duties and responsibilities of caring for and raising [Abby]. The role of parent has, by necessity, fallen upon and been willingly accepted by Grandmother. She has taught [Abby], not just by word and deed, but by example, day in and day out. She has been the source of tribal traditions, customs, and culture passed down to [Abby]. To overlook this would be to overlook an important facet of our polar star—[Abby's] best interest as a Cherokee child and enrolled Tribal member.

The court found that Abby desires a relationship with Father and that to substantially remove her from a relationship with him would create a substantial risk of detriment to her emotional wellbeing. However, the court also found:

To substantially remove [Abby] from her Grandmother's care would also likely cause a great detriment to [Abby's] emotional wellbeing. [Abby] loves her grandmother. Her grandfather, whom she calls "Dad", as well as her two half-siblings, to whom [Abby] is closely attached, also reside in Grandmother's home. This home is appropriate for [Abby]. Substantial removal from Grandmother's care would likely cause great detriment to [Abby's] total education.

The court reiterated in its December 2022 order that "Grandmother has been in [Abby's] life since her birth. . . . She has been the constant in [Abby's] life. She has served as [Abby's] primary care-

giver for all of [Abby's] life until an 'unsubstantiated' allegation was made against Grandmother in August 2022. Grandmother performed the day-in/day-out duties of a parent when both [Abby's] mother and father had for years abdicated their parental responsibilities." It is clear from the detailed, unchallenged findings of fact that the trial court's conclusion as to Abby's best interest was not manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. Therefore, we overrule Father's argument.

CONCLUSION

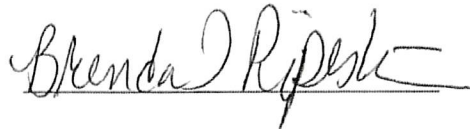
For the foregoing reasons, we affirm the trial court's decision.

AFFIRMED.

A handwritten signature in blue ink, reading "Kirk M. Saunooke", written over a horizontal line.

Kirk Saunooke

Chief Justice

A handwritten signature in black ink, reading "Brenda Toineeta Pipestem", written over a horizontal line.

Brenda Toineeta Pipestem

Associate Justice

A handwritten signature in black ink, reading "Robert C. Hunter", written over a horizontal line.

Robert C. Hunter

Associate Justice