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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-179

No. COA21-569

Filed 15 March 2022

Franklin County, No. 19 JT 70

In re: N.J.D.K., a minor child.

Appeal by Respondent from order entered 8 July 2021 by Judge Adam Keith in Franklin County District Court. Heard in the Court of Appeals 23 February 2022.

Gena Walling McCray for Franklin County Department of Social Services.

Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender J. Lee Gilliam, for Respondent-Appellant Mother.

Rosenwood, Rose & Litwak, PLLC, by Nancy S. Litwak, for guardian ad litem.

GRIFFIN, Judge.

¶ 1 Respondent-Appellant Beyonca Graves ("Mother")[1] appeals from the trial court's order terminating her parental rights to her minor child, N.J.D.K. ("Noah")[2].

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[1] Mother was born Shimikia Daniels, then legally changed her name to Alexandria Kennedy, Elizabeth Weathersby, and finally Beyonca Graves at various times relevant to this appeal. We refer to her as Mother throughout.

[2] We use a pseudonym for ease of reading and to protect the identity of the juvenile. *See* N.C. R. App. P. 42(b).

Mother contends the trial court lacked statutory grounds to terminate her parental rights because the findings of fact in the trial court's order do not sufficiently support each of the court's five grounds for termination. We hold the findings of fact sufficiently supported the trial court's conclusion that Mother willfully abandoned Noah. Because we find at least one ground supporting the termination of Mother's parental rights, we affirm.

I. Factual and Procedural Background

¶ 2 Mother has experienced a lifetime of unstable home conditions and mental health concerns. At birth, child protective services placed Mother in her grandparents' custody due to her mother's substance abuse. Mother entered the foster home system at the age of thirteen due to physical abuse in her grandparents' home. Mother suffered physical abuse from her husband until he was incarcerated for injuring Mother. In December 2019, Mother was hospitalized for nearly two weeks after a psychological evaluation, during which she destroyed hospital property, harmed herself, was aggressive with hospital staff, and claimed that she killed her boyfriend.

¶ 3 Mother gave birth to her first child, Natalie[3], in Florida in 2016. In 2017, Florida child protectives services opened an investigation into reports of Natalie's

[3] A pseudonym. *See* N.C. R. App. P 42(b).

abuse. During this investigation, Mother threatened to kill both herself and Natalie, and attempted to flee with Natalie from Florida to Texas. In 2019, the trial court ultimately terminated Mother's parental rights to Natalie after Mother voluntarily relinquished her parental rights.

¶ 4 Mother gave birth to her second child, Noah, who is the subject of this appeal, in Rowan County, North Carolina, in February 2019. Shortly after Noah's birth, Rowan County Department of Social Services became involved because Mother had been feeling driven to harm herself and Noah due to mental health concerns. Noah lived in Mother's care for roughly eight months, during which time Mother moved with Noah from North Carolina to Kentucky, then to Virginia, then back to Franklin County, North Carolina. Mother became involved with the department of social services in each state where she lived. Mother repeatedly stated that she feared for Noah's safety, heard auditory hallucinations encouraging her to harm Noah, and was unable to provide for Noah.

¶ 5 On 7 November 2019, Franklin County Department of Social Services ("FCDSS") obtained custody of Noah. That same day, FCDSS filed a petition alleging that Noah was a neglected and dependent juvenile. On 11 November 2019, Noah was placed in foster care. Noah still resides with the same foster parents.

¶ 6 Mother was allowed to visit Noah while he was in FCDSS's custody. Mother visited Noah a total of four times. FCDSS reported that, when Mother visited Noah,

she would arrive late, leave early, use her phone instead of engaging with Noah, or otherwise appear uncomfortable. She last visited Noah on 8 January 2020, and canceled a scheduled visit on 14 January 2020. On 15 January 2020, Mother texted an FCDSS social worker that she no longer wanted parental rights to Noah:

> You all, you all are right, I'm signing my rights over. I'm pregnant. I have another child to think about.
>
> I'm driving away forever. You will never see me again. Please take care of my little [Noah].
>
> I'm driving away to kill myself once and for all.

Mother then refused to communicate with FCDSS until February 2020, at which time FCDSS learned that Mother was in Kansas. Mother made no efforts to visit with Noah between this time and April 2020.

¶ 7 On 16 April 2020, Mother was arrested and incarcerated in Oklahoma on a federal prostitution-related charge. During her nearly eleven-month period of incarceration, Mother communicated with FCDSS "a few times", but did not attempt to communicate with Noah in any way or attempt to provide any financial assistance to Noah.

¶ 8 On 13 July 2020, the trial court entered written orders adjudicating Noah to be a neglected and dependent juvenile and establishing a primary plan of reunification, with a secondary plan of adoption. The trial court also ordered Mother to comply with a case plan in pursuit of reunification, including a psychological

evaluation, random drug screens, parenting education courses, a medication management plan, and obtaining and maintaining stable housing and legal income. On 22 December 2020, after a permanency plan review hearing earlier in the year, the trial court entered a written order changing the primary permanent plan from reunification to adoption, because Mother had made little progress on her ordered case plan and had become incarcerated for criminal charges.

¶ 9 On 22 January 2021, FCDSS filed a motion to terminate Mother's parental rights.

¶ 10 On 8 March 2021, Mother pleaded guilty to the federal prostitution-related charge and was released from incarceration on eight years of supervised probation. On 31 March 2021, Mother transferred her probation term from Oklahoma to North Carolina. On 7 April 2021, Mother once again told an FCDSS social worker that she intended to sign over her parental rights to Noah. A week later, Mother contacted FCDSS, said that she no longer wanted to sign over her rights, and began providing FCDSS with documentation of compliance with her case plan and probation.

¶ 11 Over the roughly eight-week period between early April 2021 and the end of May 2021, Mother began to comply in part with her case plan. Between 8 April and 26 May, Mother received a psychological evaluation; obtained housing assistance; moved into an apartment with two other inhabitants; enrolled in support programs for domestic violence, mental health conditions, and employment training; obtained

employment; and attended a therapy appointment.

¶ 12 On 27 May 2021, following a hearing on FCDSS's motion to terminate, the trial court found that five grounds existed under N.C. Gen. Stat. § 7B-1111(a) to terminate Mother's parental rights and determined that termination of Mother's parental rights was in Noah's best interests. On 8 July 2021, the trial court entered a written order (the "Termination Order") terminating Mother's parental rights to Noah based on the same five grounds. Mother timely appeals.

II. Analysis

¶ 13 Mother argues that the findings of fact in the trial court's Termination Order were not sufficient to support its adjudicatory determination that five grounds existed to terminate her parental rights under N.C. Gen. Stat. § 7B-1111(a) (2021).

¶ 14 "We review a district court's adjudication [under N.C.G.S. § 7B-1111(a)] to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *Matter of J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 70 (2020) (citations and internal quotation marks omitted). "Findings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal." *Matter of T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019). "'Moreover, we review only those findings necessary to support the trial court's determination that grounds existed to terminate [the] respondent's parental rights.'" *In re Z.O.G.-I.*, 375 N.C. 858, 861, 851 S.E.2d 298, 301

(2020) (citation omitted).

¶ 15 "[A] finding by the trial court that any one of the grounds for termination enumerated in N.C.G.S. § 7B-1111(a) exists is sufficient to support a termination order." *Matter of B.O.A.*, 372 N.C. 372, 380, 831 S.E.2d 305, 311 (2019). "Therefore, if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds." *J.S.*, 374 N.C. at 815, 845 S.E.2d at 71.

¶ 16 In this case, the trial court concluded that five grounds existed under N.C. Gen. Stat. § 7B-1111(a) for terminating Mother's parental rights to Noah, including that Mother willfully abandoned Noah under N.C. Gen. Stat. § 7B-1111(a)(7). N.C. Gen. Stat. § 7B-1111(a)(7) states that the court may terminate a parent's parental rights where

> [t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion.

N.C. Gen. Stat. § 7B-1111(a)(7) (2021). "'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.'" *Matter of B.C.B.*, 374 N.C. 32, 35, 839 S.E.2d 748, 752 (2020) (citation omitted). "[I]f 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." *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962) (citation omitted).

¶ 17 "Willful intent is a necessary component of abandonment, and, when adjudicating willful abandonment as a ground for termination under N.C.G.S. § 7B-1111(a)(7), the trial court must make adequate evidentiary findings to support its ultimate finding as to whether willful intent exists." *Matter of K.C.T.*, 375 N.C. 592, 601, 850 S.E.2d 330, 337 (2020) (citation omitted). Whether a parent possessed the willful intent to abandon her child during the relevant six-month time period "'is a question of fact to be determined from the evidence.'" *Matter of A.A.M.*, 379 N.C. 167, 2021-NCSC-129, ¶ 16 (citation omitted). "[T]he trial court may consider a parent's conduct outside the six-month window in evaluating a parent's credibility and intentions, [but] the 'determinative' period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition." *Matter of N.D.A.*, 373 N.C. 71, 77, 833 S.E.2d 768, 773 (2019) (citation and quotation marks omitted).

¶ 18 With respect to the ground of willful abandonment, Mother asserts that findings of fact 26 and 27 of the Termination Order were unsupported by the evidence at the termination hearing. Findings of fact 26 and 27 stated:

> 26. [Mother] was making income related [to] the escort

> service which [led] to her arrest in Oklahoma. [Mother] did not offer to pay for any of [Noah's] needs while he has been in foster care.
>
> 27. [Mother] did write to [FCDSS] from the Tulsa County Jail on at least one occasion. This limited communication is not contact with [Noah] that would indicate that [Mother] has not abandoned [Noah].

¶ 19 The evidence presented at the adjudication hearing supported Finding 26. In its motion to terminate Mother's parental rights, FCDSS asserted that Mother "did not offer to pay for any of [Noah's] needs while he [had] been in foster care" even though she "was making income related [to] the escort service which [led] to her arrest in Oklahoma." A social worker with FCDSS reaffirmed at the adjudication hearing that everything asserted in the motion to terminate was true and Mother did not cross-examine the social worker regarding the reaffirmation. *See Matter of Z.G.J.*, 378 N.C. 500, 2021-NCSC-102, ¶ 22 (holding trial court "did not err by relying on [social worker's] testimony adopting the allegations in the termination petition when it entered its adjudication order" where the social worker "reaffirmed, under oath, all of the allegations from the termination petition" and the respondent had "the opportunity to cross-examine [the social worker] with respect to any of these allegations, and she declined to do so"). Further, Mother testified during the hearing that she had a bank card with "backup money from when [she] went to jail", that she received two government stimulus checks, and that she was able to pay $6,500 to

purchase a car immediately after she was released from jail. The evidence supported the trial court's finding that Mother had income available but did not attempt to financially support Noah.

¶ 20 Finding 27 is also supported by the evidence presented at the adjudication hearing. The FCDSS social worker testified that FCDSS and Mother "corresponded a few times via letter" while Mother was incarcerated. The social worker further testified that, notwithstanding these letters, FCDSS still sought to change the primary permanent plan to adoption at the next permanency hearing. Finding 27 accurately described Mother's communication with FCDSS and reasonably determined that her limited contact with FCDSS did not amount to contact with Noah based upon FCDSS's characterization of the letters.

¶ 21 In addition, the Termination Order includes the following findings of fact relevant to the grounds of willful abandonment:

> 5. . . . Neither [Mother] nor father presented evidence during the adjudication phase, but each [was] given the opportunity. . . .
>
> . . .
>
> 20. [Mother] was scheduled to visit with [Noah] on January 14, 2020, but she cancelled the appointment stating that she was in the emergency room. . . . [FCDSS] determined that was not true.
>
> 21. On January 15, 2020, at 4:28 a.m., [Mother] texted her foster care social worker,

a. "You all are right I'm signing my rights over I'm pregnant I have another child to think about."
b. "I'm driving away forever you will never see me again please take care of my little [Noah]."
c. "I'm driving away to kill myself once and for all."

24. Up to the time [FCDSS] filed the [] motion to terminate the parent' rights, [Mother] had made no progress towards reunification. She has not visited [Noah] since January 8, 2020. She did not take advantage of skype visits that were offered. Before she was incarcerated, she had not provided [FCDSS] with the names and contact information of her mental health providers. . . .

25. [Mother] left the state of North Carolina and was incarcerated in the Tulsa County Kail in Tulsa[,] Oklahoma[.]

. . .

28. [FCDSS] offered to arrange and pay for [Mother's] psychological evaluation, refer her to parenting classes, and facilitate visits with [Noah}. [Mother] did not take advantage of these services, but instead left North Carolina. She intended to start a new life . . . .

. . .

31. The last time [Mother] has had contact with [Noah] was January 8, 2020.

. . .

38. Since being released from her incarceration, [Mother] has taken a number of steps to address her mental health and parenting. However, [Mother] has a lifelong history of starting mental health services and stopping mental health services. At the beginning of [Noah's] case, [Mother] took steps to address her mental health needs, but then

> stopped receiving treatment, left the State of North Carolina and became involved in criminal activity. These are willful choices that she made that resulted in [Noah] remaining in foster care since November 7, 2019.
>
> . . .
>
> 41. The [c]ourt has compassion for [Mother's] own history of suffering from abuse and her struggles with mental health, but it is clear that [Mother] has made choices in her life that prevent her from having stability. . . .
>
> 42. [Noah] and [Mother] have no bond because [Mother] has had no contact with [Noah] since January 8, 2020, when she chose to leave North Carolina.

Mother does not challenge these findings; they are therefore binding on appeal. *T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58.

¶ 22 FCDSS filed its motion for termination of Mother's parental rights on 22 January 2021. The determinative six-month period for deciding whether Mother willfully abandoned Noah is therefore from 21 July 2020 to 21 January 2021. Mother was incarcerated in another state for the entirety of this period of time. The trial court's supported or otherwise binding findings show that, between July 2020 and January 2021, Mother "made no progress towards reunification", did not attempt to provide any financial support for Noah despite having available funds, and did not attempt to communicate with Noah despite being able to do so while incarcerated.

¶ 23 Mother argues that the trial court's findings are insufficient to support willful abandonment because they failed to appropriately consider the effects of Mother's

incarceration on her failure to provide care, support, and maintenance to Noah. Our Supreme Court has noted that incarceration is a factor the court must consider when determining a parent's willfulness, but is not an excuse that will shield the parent from such a finding:

> We . . . note that our precedents are quite clear—and remain in full force—that incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision. Although a parent's options for showing affection while incarcerated are greatly limited, a parent *will not be excused from showing interest in the child's welfare by whatever means available*. As a result, our decisions concerning the termination of the parental rights of incarcerated persons require that courts recognize the limitations for showing love, affection, and parental concern under which such individuals labor while simultaneously requiring them to do what they can to exhibit the required level of concern for their children.

Matter of A.G.D., 374 N.C. 317, 320, 841 S.E.2d 238, 240 (2020) (internal citations, quotation marks, and editing marks omitted).

¶ 24 Mother did not present any evidence during the adjudication hearing explaining her failure to extend care or support for Noah during her incarceration. The trial court heard only that Mother reached out to FCDSS "on at least one occasion." There was no evidence that these communications requested contact with Noah, or that Mother otherwise attempted to contact or provide support for Noah. The evidence did not show that Mother was unable to communicate outside the Tulsa County jailhouse walls. It could be reasonably inferred from the evidence that Mother

was capable of contacting Noah or providing him with support despite her incarceration. *See Matter of L.M.M.*, 375 N.C. 346, 352, 847 S.E.2d 770, 775 (2020). Absent other evidence creating a controversy of fact, the trial court was under no obligation to contemplate explanations limiting Mother's ability to display filial affection to Noah. *See Matter of S.C.L.R.*, 378 N.C. 484, 2021-NCSC-101, ¶ 28 ("[T]he trial court resolved the reason for [the] respondent-mother's lack of contact: it concluded that [the] respondent-mother willfully abandoned [the juvenile].").

¶ 25 Further, the findings detail Mother's conduct prior to and after the determinative six-month period that reflect on Mother's credibility and intent. The findings show that Mother did not have contact with Noah at all between 9 January 2020 and 22 January 2022, despite at least one opportunity to do so. Rather, Mother "chose to leave North Carolina" and "intended to start a new life" outside this state and without Noah. After FCDSS took custody of Noah, Mother sent FCDSS text messages explicitly stating that she wanted to sign away her parental rights to Noah. Mother failed to make reasonable progress on her case plan. The trial court found Mother's decisions to forego stable mental health treatment, to leave the state where Noah lived, to become involved in criminal activity, and to not communicate with Noah were "willful choices that she made that resulted in [Noah] remaining in foster care."

¶ 26 Mother began to take actions to comply with her case plan about eight weeks

before the hearing on FCDSS's motion to terminate her parental rights. The trial court's findings show that it considered this progress, weighed it against Mother's history of mental health concerns, and determined that it did not outweigh Mother's prior, explicit expressions of intent to abandon Noah. *See In re J.A.M.*, 372 N.C. 1, 11, 822 S.E.2d 693, 700 (2019) ("[A]n important aspect of the trial court's role as finder of fact is assessing the demeanor and credibility of witnesses, often in light of inconsistencies or contradictory evidence. It is in part because the trial court is uniquely situated to make this credibility determination that appellate courts may not reweigh the underlying evidence presented at trial."). "While the trial court may consider [Mother's] efforts outside of the determinative six-month period, those actions do not preclude a finding that [she] willfully abandoned [Noah] when [s]he did nothing to maintain or establish a relationship with [Noah] during the determinative six-month period." *A.A.M.*, 2021-NCSC-129, ¶ 31.

¶ 27 The trial court's findings of fact sufficiently show that Mother abandoned Noah for the determinative six months prior to the filing of FCDSS's motion to terminate her parental rights. Further, the findings explore the relationship between the willfulness of Mother's actions, her mental health concerns, her criminal conduct, and her intent to abandon Noah. *Cf. Matter of K.C.T.*, 375 N.C. 592, 601, 850 S.E.2d 330, 337 (2020) (finding insufficient support for grounds of willful abandonment where "the trial court's order ma[de] no attempt to explore the interplay between [findings

of] impediments and [the] respondent-mother's intent"). The trial court's relevant findings of fact were supported by the evidence at the hearing, and its ultimate finding that Mother willfully abandoned Noah was supported by those findings of fact.

¶ 28 "Because we hold that the trial court properly adjudicated a ground for terminating [Mother's] parental rights under [N.C. Gen. Stat. § 7B-1111(a)(7)], we need not review [Mother's] arguments regarding the [four] additional grounds for termination found by the trial court." *J.S.*, 374 N.C. at 821, 845 S.E.2d at 75 (citations omitted).

III. Conclusion

¶ 29 The trial court's findings of fact sufficiently supported its conclusion that Mother willfully abandoned Noah. Mother does not challenge the trial court's dispositional conclusion that termination of her parental rights was in Noah's best interests. *See Matter of N.P.*, 374 N.C. 61, 66, 839 S.E.2d 801, 805 (2020) (citation omitted); N.C. Gen. Stat. § 7B-1110(a) (2021). We affirm the trial court's order terminating Mother's parental rights.

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).