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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-226

No. COA21-582

Filed 5 April 2022

Vance County, No. 20 JT 8

IN THE MATTER OF: C.J.O.

Appeal by Respondent from an order entered 16 June 2021 by Judge S. Katherine Burnette in Vance County District Court. Heard in the Court of Appeals 23 February 2022.

Gillette Law Firm, PLLC, by Jeffrey William Gillette, for Respondent-Appellant Father.

Moore Law Group, PLLC, by Jillian M. Moore, for Petitioner-Appellee Mother.

JACKSON, Judge.

¶ 1 Respondent appeals from the trial court's order terminating his parental rights to "Caleb,"[1] a minor child born on 21 April 2015. After careful review, we conclude that the evidence and trial court's findings of fact support the conclusion that Respondent willfully abandoned Caleb within the meaning of N.C. Gen. Stat. § 7B-1111(a)(7). Accordingly, we affirm.

I. Factual and Procedural Background

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

¶ 2 Caleb has spent his entire life in Petitioner's care and custody. Petitioner-mother and Respondent-father dated for a few years during high school and for some time thereafter. The parties had an on-and-off romantic relationship, which ended when Petitioner was four months pregnant with Caleb. Petitioner and Respondent broke up, in part, because of Respondent's history of drug abuse and heroin addiction. When Caleb was born, Respondent came to the hospital after the birth and proceeded to fall asleep in a chair. Based on his demeanor and behavior, Petitioner believed Respondent was high on heroin while at the hospital because he "had been on drugs for a while at that point, even during [her] pregnancy."

¶ 3 During the first few years of Caleb's life, Respondent's contact with Caleb was limited and sporadic. Respondent continued to use heroin and spent varying lengths of time in jail. Petitioner would not allow Respondent to see Caleb when he was high on heroin because she was concerned for Caleb's safety. The last time Caleb saw Respondent was a visit in June 2018. Respondent requested to see Caleb, who at the time was about three years old, before going to prison. Petitioner brought Caleb to see Respondent and his family for about an hour, and Petitioner supervised Caleb during the visit while Caleb played on a four-wheeler with Respondent. Caleb did not call Respondent "Dad" during this last visit, despite Respondent's hope that he would do so.

¶ 4 Sometime in 2017 or 2018, Respondent was arrested for felonious breaking and entering. He was sentenced to two years' imprisonment, which he served from August 2018 to August 2020. During Respondent's two-year sentence, Respondent had limited contact with Petitioner and only called her one time. Respondent asked about Caleb during this phone call but did not send any cards or letters or other support to Caleb while incarcerated.

¶ 5 Petitioner has been Caleb's primary caregiver for the minor child's entire life. She has taken Caleb to his doctor's appointments and overseen his education. Petitioner is in a long-term relationship with her fiancé, Mr. Orr, who has taken on a parenting role in Caleb's life for over three years. Petitioner and Mr. Orr are parents of four-year-old twins, with whom Caleb has a great relationship.

¶ 6 Caleb is a polite and well-adjusted child. He performs well in school, and enjoys dodgeball, baseball, fishing, and art class. When the Guardian ad Litem ("GAL") visited Petitioner's home, she observed that "it was no question in [her] mind" that Caleb believes Mr. Orr is his father and does not remember Respondent.

¶ 7 Mr. Orr treats Caleb no differently from his biological children. He is involved in Caleb's schooling, helps him with his homework, and coaches his baseball team. Caleb enjoys riding dirt bikes and fishing with Mr. Orr. Mr. Orr plans to adopt Caleb and told the GAL that he is "already his Dad except on paper and has been for a long time."

¶ 8 Over the course of Caleb's life, Respondent failed to provide any financial support for his son. Respondent admitted that he never bought any clothes for Caleb, never provided any money or other support for him, and never sent or offered to send any gifts or cards on holidays or birthdays prior to the TPR being filed because he "did not see the child." When the GAL asked Respondent why he had not provided for Caleb physically or financially, he said "because he was incarcerated and before that had a drug problem and [Petitioner] never asked him for anything." The GAL determined after speaking with Respondent that he had "little to no contact" with Caleb since his birth.

¶ 9 On 9 June 2020, the Petitioner filed a petition in Vance County District Court to terminate Respondent's parental rights. The petition alleged, *inter alia*, that Respondent had neglected the minor child by (1) failing to provide for his proper care, supervision, and discipline, (2) failing to provide financial support for the minor child, and (3) willfully leaving the minor child in Petitioner's care for over 12 months without making any effort to communicate with, see or otherwise contact the minor child. Accordingly, Petitioner requested the termination of Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1110. Respondent did not file a responsive pleading.

¶ 10 After the TPR was filed, and after Respondent's release in August 2020, Respondent texted Petitioner and asked about Caleb. Respondent offered to buy

Caleb a gift for Christmas in 2020, but he was advised not to by the GAL because Caleb would not understand who the gift was from. Respondent bought Caleb a gift for his birthday in 2021, which coincidentally fell on the same day as the TPR hearing. Respondent brought the gift, a fishing rod and other fishing supplies, to court.

¶ 11 On 21 April 2021, the case was heard in Vance County Civil District Court by the Honorable S. Katherine Burnette. The court heard testimony from Petitioner, Mr. Orr, Respondent, Respondent's father, Respondent's stepmother, and the GAL. On 21 June 2021, the trial court entered an order concluding that grounds existed for the termination of Respondent's parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(1) and (7), and that it was in Caleb's best interests to terminate Respondent's parental rights. The trial court's relevant findings are detailed as needed in our discussion.

¶ 12 Respondent timely entered notice of appeal.

II. Analysis

A. Standard of Review

¶ 13 In North Carolina, there is a "two-stage process" for the termination of parental rights in a minor child, the adjudicatory stage and the dispositional stage. *In re N.D.A.*, 373 N.C. 71, 74, 833 S.E.2d 768, 771 (2019); N.C. Gen. Stat. §§ 7B-1109-1110 (2021).

At the adjudicatory stage, the petitioner bears the burden

> of proving by clear, cogent, and convincing evidence that one or more of the grounds for termination delineated in N.C.G.S. § 7B-1111 exist. If the trial court determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.

In re N.D.A., 373 N.C. at 74, 833 S.E.2d at 771 (cleaned up).

¶ 14 Respondent does not contest the trial court's dispositional determination that it was in Caleb's best interests to terminate his parental rights. Thus, the sole issue before us is whether the trial court correctly determined that one or more grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111 (2021).

¶ 15 We review "a trial court's adjudication decision pursuant to N.C.G.S. § 7B-1109 in order to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law, with the trial court's conclusions of law being subject to de novo review on appeal." *Id.* at 74, 833 S.E.2d at 771 (internal quotation and citation omitted). "Findings of fact not challenged by respondents are deemed supported by competent evidence and are binding on appeal. A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re D.M.*, 375 N.C. 761, 767, 851 S.E.2d 3, 9 (2020) (cleaned up).

B. Willful Abandonment

¶ 16 The trial court concluded that two grounds existed under N.C. Gen. Stat. § 7B-1111 for terminating respondent's parental rights, including that respondent had "willfully abandoned" Caleb pursuant to § 7B-1111(a)(7). "It is well established that an adjudication of any single ground for termination under N.C.G.S. § 7B-1111(a) will suffice to support a trial court's order terminating parental rights." *In re L.M.M.*, 375 N.C. 346, 349, 847 S.E.2d 770, 773 (2020) (citation omitted).

¶ 17 A trial court may terminate parental rights where the parent has "willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition[.]" N.C. Gen. Stat. § 7B-1111(a)(7) (2021). "[T]he trial court may consider a parent's conduct outside the six-month window in evaluating a parent's credibility and intentions" during the relevant six-month period. *In re C.B.C.*, 373 N.C. 16, 22, 832 S.E.2d 692, 697 (2019) (internal marks and citation omitted). *See also In re G.G.M.*, 377 N.C. 29, 36, 2021-NCSC-25, ¶ 20 ("The trial court was entitled to consider respondent's years-long absence from the children's lives when determining respondent's credibility and intent to abandon his children during the six months preceding the filing of the petition."). However, a respondent's actions prior to, or following, the filing of the TPR will not preclude a finding of willful abandonment during the determinative six-month period. *In re C.B.C.*, 373 N.C. at 22-23, 832 S.E.2d at 697.

¶ 18 Here, the determinative time period is the six-month period between 11

December 2019 and 11 June 2020, the date Petitioner filed her petition. Respondent was incarcerated for the entire relevant period.

¶ 19 "[A]bandonment requires a purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child. The willful intent element is an integral part of abandonment and is determined according to the evidence before the trial court." *In re L.M.M.*, 375 N.C. at 349, 847 S.E.2d at 773 (internal quotations and citations omitted). "For a parent's actions to constitute willful abandonment, however, it is not necessary that a parent absent himself continuously from the child for the specified six months, nor even that he cease to feel any concern for its interest." *In re J.D.C.H.*, 375 N.C. 335, 345, 847 S.E.2d 868, 876 (2020) (internal quotation and citation omitted). Our appellate courts "have repeatedly held that if a parent withholds that parent's presence, love, care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child." *In re A.L.S.*, 374 N.C. 515, 519, 843 S.E.2d 89, 92 (2020) (cleaned up).

¶ 20 The trial court concluded that "[t]here are grounds to terminate the parental rights of the father, [Respondent], pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) in that he has willfully abandoned the minor child for at least six consecutive months immediately prior to the filing of the Petition in this case." In support of this conclusion, the trial court made the following relevant findings of fact:

20. The Respondent has taken no steps, prior to the filing of the Petition, to legitimize the minor child.

. . .

32. The Respondent's drug addiction precipitated his numerous criminal charges and jail stays, for days at a time, such that the Respondent was frequently in and out of jail for several years.

. . .

35. The Petitioner has provided all financial, emotional, and physical support, nurture, and care of the minor child since his birth. She has taken him to doctors' appointments and to school.

36. Beginning in August, 2018, the Respondent was imprisoned for two years on breaking and entering convictions.

37. Prior to his incarceration, the Respondent had limited contact with the minor child since the child's birth.

. . .

39. At no time since the birth of the minor child has either party filed for custody of the minor child[.]

. . .

45. While in prison, the Respondent had infrequent contact with the Petitioner.

. . .

48. Respondent Father has not visited with the minor child since June, 2018.

. . .

50. The Respondent only called Petitioner once while he was incarcerated.

51. The minor child has no attachment to the Respondent father.

52. The minor child is unaware that the Respondent is his natural father.

. . .

58. The Respondent father has taken no steps to provide for the minor child's physical and economic needs.

59. The Respondent did not send birthday or holiday gifts or cards to the minor child and did not send any clothes or money for the child's support at any time because the Respondent did not see the child.

60. Prior to August, 2018, the Respondent father took no voluntary steps to correct the conditions that led to the filing of the Petition, i.e., he did not provide any financial support, affection to, and did not visit with his minor child.

61. Since his incarceration in June, 2018, the Respondent made no consistent effort to keep in contact with his minor child.

62. The Respondent Father's contact with the minor child has been, at best, sporadic.

63. The Respondent Father sent no birthday or holiday cards and no gifts to the minor child since the child's birth.

. . .

65. The Respondent father has had little contact with the minor child prior to 2018, and an emotional bond is nonexistent.

66. The minor child does not know Respondent father at

> all.
>
> 67. [Mr.] Orr, the Petitioner's fiancé, recalls speaking to the Respondent one time about the minor child prior to November, 2016. Orr said the Respondent never took the initiative to visit the minor child.
>
> . . .
>
> 80. The minor child has been in the care of the Petitioner for his whole life.
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> . . .
>
> 82. During the life of the minor child, the Respondent's actions are ones of consistently withholding his love and filial affection for his minor son.

¶ 21 Each of the above facts are unchallenged by Respondent and supported by clear, cogent, and convincing evidence. Therefore, these findings are binding on appeal. We hold that the above findings support the conclusion that Respondent willfully abandoned Caleb pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (2021).

¶ 22 Although Respondent does not specifically challenge any of the trial court's findings, Respondent argues that the trial court erred by failing to make particular findings to evince Respondent's willfulness, including (1) whether Respondent had the ability to contact his son while in prison and to what extent Respondent's incarceration interfered with his ability to show parental concern for Caleb; (2) whether Petitioner "had cut off all contact with the child and engaged in a systematic plan to conceal from the child the identity of his true father"; and (3) outside of the

statutory six-month period, to what extent Respondent's actions were a result of his heroin addiction and not his intent to abandon Caleb.

1. Respondent's Incarceration

¶ 23 "A parent's incarceration may be relevant to the determination of whether parental rights should be terminated, but 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." *In re J.M.J.-J.*, 374 N.C. 553, 565, 843 S.E.2d 94, 105 (2020) (internal quotations and citation omitted). "Although [a parent's] options for showing affection while incarcerated are greatly limited, the respondent will not be excused from showing interest in his child's welfare by whatever means available." *In re J.L.K.*, 165 N.C. App. 311, 318-19, 598 S.E.2d 387, 392 (2004) (internal quotation and citation omitted).

¶ 24 A trial court's failure to make findings regarding whether an incarcerated parent had the ability to contact their minor child from prison may preclude a finding of willfulness. *See In re N.D.A.* 373 N.C. at 82, 833 S.E.2d at 776 (holding that "the trial court failed to make any findings of fact relating to the issue of the extent, if any, to which respondent-father's incarceration affected his ability to visit with or otherwise contact [the child,]" and "such findings [were] necessary in order for the trial court to make a valid determination regarding the extent to which respondent-father's failure to contact [the child] and petitioner from 2014 through December 2016

was willful").

¶ 25 Here, however, the trial court's failure to make this finding is not fatal. Although the trial court did not specifically find that Respondent had the ability to contact Petitioner or his child while incarcerated, the trial court found that "[w]hile in prison, the Respondent had infrequent contact with the Petitioner[,]" and "Respondent only called Petitioner once while he was incarcerated." These findings necessarily show, at a minimum, that Respondent had the ability to call Petitioner, Caleb's primary caretaker, while incarcerated.

2. Petitioner's Role in Denying Respondent Contact with the Minor Child

¶ 26 A "probable hostile relationship" between the respondent and petitioner may preclude a finding of willfulness where there is a substantial factual dispute that remains unresolved by the trial court's findings of fact. *See In re Young*, 346 N.C. 244, 252, 485 S.E.2d 612, 617 (1997) (holding that the "findings of fact indicate a probable hostile relationship between respondent and petitioner's family members[,]" which was unresolved by the trial court, and concluding that the mother's conduct did not evidence willful abandonment). *See also In re D.T.H.*, 2021-NCSC-106, ¶ 23 ("In light of the conflicting evidence received at the termination hearing, the trial court had the obligation to resolve a substantial factual dispute over the extent to which Respondent had had contact with [the child] and the extent to which the

limited relationship that Respondent had been able to sustain with [the child] stemmed from interference by the maternal grandparents rather than from Respondent's action or inaction[.]").

¶ 27 However, "evidence of ill will" between the respondent and petitioner, or their respective families, does not excuse the respondent "from showing interest in the child's welfare by whatever means available." *In re A.L.S.*, 374 N.C. 515, 522, 843 S.E.2d 89, 93-94 (2020) (cleaned up) ("Respondent-mother's failure to even attempt any form of contact or communication with [her child] gives rise to an inference that she acted willfully in abdicating her parental role, notwithstanding any personal animus between her and petitioners.").

¶ 28 Here, the district court made the following findings regarding the Petitioner's role in denying Respondent contact with Caleb:

> 34. The Petitioner denied visits to the Respondent when he was on heroin because she was afraid that the minor child would be neglected or injured while in the Respondent's care.
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> . . .
>
> 41. The Petitioner allowed the Respondent to visit with the minor child sporadically prior to 2018.
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> 42. The sporadic visitation was based on the Respondent's heroin addiction and the Petitioner's concern for the safety of the minor child.
>
> 43. The Petitioner was afraid to leave the minor child alone with the Respondent due to his erratic behavior while

> high on heroin.
>
> 44. The minor child visited with the Respondent and the Respondent's family in June, 2018 so that the Respondent could see the minor child before the Respondent went to prison.
>
> . . .
>
> 49. Text messages sent sometime in June 2018 to the Respondent's stepmother indicated that the Petitioner was angry at the Respondent because he came in late the night before and she did not let him visit with the minor child on Father's Day 2018.

¶ 29 Respondent argues that, like in *In re Young*, Respondent's lack of contact with Caleb was attributable in part to the "hostile relationship" between his family and Petitioner. 346 N.C. at 252, 485 S.E.2d at 617. However, in *Young*, our Supreme Court did not entirely base its reversal of respondent's TPR on this family dynamic. In *Young*, the Court also found that a finding of willful abandonment was not supported because the findings indicated the respondent (1) was undergoing chemotherapy during the dispositive six-month period, (2) began visiting the child as soon as she learned his whereabouts, and (3) had requested to see the child before her surgery but was denied by the petitioner. *Id.* at 251-52, 485 S.E.2d at 617.

¶ 30 Here, the trial court did not prejudicially err by failing to make more findings on the relationship between Respondent, his family, and Petitioner, as this issue does not arise to the level of a substantial factual dispute. The findings indicate that Petitioner did in fact allow some visitation between Respondent and Caleb prior to

Respondent's incarceration, though she would remain present during the visits due to Respondent's heroin addiction and Petitioner's concern for Caleb's safety.

¶ 31 The trial court also found that, in one instance, Petitioner did not allow Respondent to visit with Caleb on Father's Day in 2018 for an apparently arbitrary reason. While Respondent's family may have alleged other instances of this behavior from Petitioner, the trial court was free to determine the weight and credibility to give this testimony. *See Phelps v. Phelps*, 337 N.C. 344, 357, 446 S.E.2d 17, 25 (1994). It is difficult to imagine a termination of parental rights case such as this one, where one parent petitions to terminate the other parent's rights, without some evidence of friction between the parties, but not all friction creates a material factual dispute.

¶ 32 Although Respondent now argues that Petitioner is the reason why he did not have an active role in his son's life for years, in his testimony, Respondent took some responsibility for the absence in his son's life, admitting that he was "on drugs for a couple of years" and went to prison, but he was "here now to make it right." Respondent also admitted that he knew he had the right and ability to file for custody to see Caleb but did not do so because he was "sidetracked in life" and "messed up." Respondent effectively admitted at trial that his addiction and immaturity were major factors to the sporadic visitation with his child over the course of the child's life, not simply his tenuous relationship with Petitioner.

3. Respondent's Drug Use Prior to the Determinative Period

¶ 33 Respondent argues that the "most obvious explanation for [his] conduct was not a purposeful and deliberate intent to abandon Caleb[,]" but "most likely the result of his debilitating substance abuse disorder." Respondent therefore argues that the trial court erred by not addressing in a specific finding whether his addiction interfered with his ability to show concern for Caleb, such that it was not Respondent's willful intent to abandon him.

¶ 34 Considering the specific ground for termination under § 1111(b)(7), we hold that the trial court did not err by failing to address this issue, as it does not preclude a finding of abandonment during the determinative period. Respondent alleges that his heroin use ended in August 2018, when his prison sentence began, and that he has been sober since. Therefore, Respondent was self-admittedly sober throughout the determinative period, and we are not persuaded that his drug addiction precluded him from manifesting an intent to abandon Caleb during the determinative period.

* * *

¶ 35 We hold that the trial court's unchallenged findings were sufficient to conclude that Respondent willfully abandoned Caleb, such that he "manifest[ed a] willful determination to forego all parental duties and relinquish all parental claims to the child." *In re L.M.M.*, 375 N.C. at 349, 847 S.E.2d at 773 (internal quotation and citation omitted). During the dispositive six-month period, the evidence shows and the trial court found that the Respondent (1) failed to send any cards or gifts to Caleb,

(2) failed to provide any physical, financial, or emotional support to Caleb, and (3) at best, called Petitioner one time. Here, Respondent again does not specifically challenge any of these findings but argues that the trial court erred by making no findings of fact specific to the statutory six-month time frame. We disagree.

¶ 36 The trial court did not specify whether the lone phone call Respondent made from prison took place during the six-month period, only that it took place sometime during the two-year period that Respondent was incarcerated. Presuming for Respondent's benefit that the phone call took place during the determinative period, one phone call does not undermine the trial court's finding of willful abandonment. *See, e.g., In re J.D.C.H.*, 375 N.C. at 345, 847 S.E.2d at 876 (rejecting the respondent's argument that "his single phone call is sufficient to demonstrate that he did not intend to forgo all parental duties and did not willfully abandon the children[,]" where he "acknowledge[d] that he had no other contact with petitioner during the relevant six-month period"); *In re B.S.O.*, 234 N.C. App. 706, 713, 760 S.E.2d 59, 65 (2014) ("Both the evidence and the court's findings reflect that respondent-father's arrest and subsequent deportation did not prevent him from communicating with his children . . . . In light of respondent-father's single phone call to respondent-mother and his children during the six months . . ., the district court did not err in finding that he willfully abandoned the children.").

¶ 37 Moreover, outside of and overlapping with the dispositive six-month period,

the trial court also found that for the entirety of Caleb's life, Respondent never sent any cards or gifts on holidays or birthdays, or clothes or money for the child's support.[2] Prior to the petition being filed, Respondent had taken no steps to legitimize the minor child or file for custody. Prior to his incarceration, Respondent had "little contact" with the child, and such contact was "at best, sporadic." Respondent's visitation was so infrequent that Caleb, who was nearly three-and-a-half years old when Respondent's sentence began, had no idea who Respondent was and had formed no emotional bond with him. In light of Respondent's behavior over the course of Caleb's life, which may be considered "in evaluating a parent's credibility and intentions[,]" *In re C.B.C.*, 373 N.C. at 22, 832 S.E.2d at 697 (internal marks and citation omitted), Respondent's inaction during the dispositive period was standard parenting for him.

¶ 38 The trial court did not err by determining that grounds existed under N.C. Gen. Stat. § 7B-1111(a)(7) to terminate Respondent's parental rights, because the

[2] Respondent alleges that he never sent any money or gifts because he "did not see" Caleb, Petitioner "never asked him for anything," and when he offered money outside of the dispositive period, Petitioner refused it. Even assuming that, prior to the dispositive period, Respondent offered money to Petitioner and she refused it, that would not preclude the trial court from finding willful abandonment here. *See In re Estate of Lunsford*, 359 N.C. 382, 388, 610 S.E.2d 367, 370 (2005) ("Even assuming that [the minor child] refused to accept [the father's] occasional offers of financial assistance, the trial court could reasonably have concluded that [the father's] sporadic contacts with his daughter over a seventeen-year period failed to reflect the degree of 'presence,' 'love,' 'care,' and 'opportunity to display filial affection' that defines non-abandoning parents." (citation omitted)).

trial court's findings show Respondent took "no action whatsoever to express love, affection, and parental concern for the child during the relevant six-month period[.]" *In re L.M.M.*, 375 N.C. at 355, 847 S.E.2d at 776-77 (internal marks omitted). In light of this holding, we need not review the trial court's additional grounds for termination. *Id.*

III. Conclusion

¶ 39 For the foregoing reasons, we affirm the trial court's termination of Respondent's parental rights.

AFFIRMED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).