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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-511

Filed 04 April 2023

Nash County, No. 21-JT-31

IN THE MATTER OF: P.J.W.W.

Appeal by respondent-father from the order entered 23 December 2021 by Judge Elizabeth Freshwater-Smith in Nash County District Court. Heard in the Court of Appeals 21 February 2023.

Reece & Reece, by Mary McCullers Reece for respondent-appellant father.

Battle, Winslow, Scott & Wiley, P.A., by M. Greg Crumpler and Katherine Wiggins Fisher for petitioner-appellee mother.

FLOOD, Judge.

Timothy Moore (“Respondent-Father”) appeals from the order (the “Order”) terminating his parental rights as to his minor child, William.¹ After careful review, we conclude that clear, cogent, and convincing evidence supports at least one ground for termination of Respondent-Father’s parental rights, and the trial court did not abuse its discretion in concluding it was in William’s best interests to terminate.

I. Background and Procedural History

¹ A pseudonym has been used to protect the identity of the minor child.

Respondent-Father and Isabella Wagley (“Petitioner-Mother”) began a romantic relationship in the fall of 2015. Petitioner-Mother became pregnant with William in November 2015. In March 2016, Respondent-Father and Petitioner-Mother ended their relationship but remained in contact and committed to co-parenting William. Prior to William’s birth, with the guidance of a co-parenting specialist, Petitioner-Mother created four parenting plan options from which Respondent-Father could choose. Petitioner-Mother wanted to be flexible, as Respondent-Father’s schedule was not a regular nine to five day job, and he lived in two different places. At this time, Respondent-Father split his time between two addresses: a houseboat he rented in Washington, D.C. for \$800 per month, and a home he owned in Heathsville, Virginia. Petitioner-Mother sent Respondent-Father the parenting plan options on two different occasions, 10 April 2016 and 1 May 2016, but Respondent-Father did not respond.

On 26 July 2016, William was born in Nantucket, Massachusetts. Respondent-Father was not listed on the birth certificate as Petitioner-Mother was advised to omit his name because they were not married, and Respondent-Father was not present at the birth. Respondent-Father brought up the issue of the birth certificate with Petitioner-Mother several times. Petitioner-Mother asked Respondent-Father to provide necessary information to have his name added, but he did not provide the information, and instead told Petitioner-Mother, “you do it.” As of the time of this appeal, Respondent-Father’s name is still not listed on William’s birth certificate.

After William was born, Petitioner-Mother continued to visit Respondent-Father, so he could spend time with William. From August 2016 through November 2016, Petitioner-Mother invited Respondent-Father to William's doctor appointments and daycare events. Respondent-Father attended all these events except a "back to school night" because he had to work. Petitioner-Mother also listed Respondent-Father as a "pick-up contact" with William's daycare, and Respondent-Father picked William up from daycare several times.

Petitioner-Mother, Respondent-Father, and William spent Thanksgiving 2016 together at a cabin with Petitioner-Mother's brother and sister-in-law. According to Petitioner-Mother, Respondent-Father spent the holiday "drinking heavily from morning till night," and would become "agitated" any time William cried.

Despite this experience over Thanksgiving, Petitioner-Mother planned a Christmas trip to the cabin so they could all spend William's first Christmas as a family. Respondent-Father drank very heavily on 27 December and became belligerent when Petitioner-Mother asked him to go sleep in his bed instead of staying on the couch where he was snoring loudly. Respondent-Father was allegedly furious when he woke up, and he repeatedly called Petitioner-Mother expletives in front of William. At first light the following morning, Petitioner-Mother took William home.

On 23 February 2017, Respondent-Father left gifts for William on Petitioner-Mother's doorstep. This was the first time Respondent-Father made any form of contact since Petitioner-Mother and William left the cabin on 28 December 2016. On

24 February 2017, Petitioner-Mother sent an email to Respondent-Father asking him to stop leaving gifts for William at her home and requested he contact her directly so they could meet in a public place to exchange gifts. She further offered to set up a Post Office box for Respondent-Father to send things to, if that would be easier for him. Petitioner-Mother claimed that, after her experience over Christmas, it was “too scary” to have Respondent-Father “just showing up” at her house. Respondent-Father did not respond to her email.

Despite her request, Respondent-Father continued to drop things off for William at Petitioner-Mother’s house. In an email to Respondent-Father on 18 March 2017, Petitioner-Mother threatened legal action if Respondent-Father continued to come to her home. Respondent-Father responded to this email, stating, “[p]erhaps you did not receive my messages asking where you would like to meet. As you did not respond I did drop off those items.” Petitioner-Mother sent a response email on the same day telling Respondent-Father she did not receive any messages, and stating, “[a]s you know I’ve blocked your number.”

Respondent-Father testified at the subsequent termination of parental rights hearing that he did not know she had blocked his number; he learned of this for the first time when he read her response email. Petitioner-Mother, however, read during her testimony a 9 March 2017 text message exchange in which Respondent-Father called her a “crazy ex-girlfriend,” and told her, “you’re pathetic inside,” and “you have some issues.” Petitioner-Mother responded to these statements by telling

Respondent-Father, “this nut job is going to block you . . . you will always have my email address, but I cannot continue to keep getting these messages . . . and these phone calls.”

Before Petitioner-Mother blocked Respondent-Father’s phone number, he sent her “random messages with no context at all.” Respondent-Father did not inquire of William in these messages or ask to see him. On 7 March 2017, in response to these messages, Petitioner-Mother sent Respondent-Father an email detailing two parenting options from which he could choose:

1. If you would like to be part of [William’s] life – please contribute [half] of his day care and health insurance (\$1,200), each month. This does not include the cost of his food, formula, diapers or clothes. We can work out a visiting schedule. You will be required to pay the amount you have missed since December 2016. I am happy to accommodate you as much as possible: items that are nonnegotiable are outlined below:

1. These visits will include you, [William], and someone else that I know and trust;
2. These visits will last 2 hours or less;
3. These visits will be requested with at least 3 days advance notice;
4. These visits will not exceed 3 days per week;
5. You will have all responsible gear and food for [William] when he is in your care;
6. These terms are valid until I feel that I can trust you on your own with [William].

Option number two allowed Respondent-Father to walk away and cease all contact.

From Christmas 2016 until this March 2017 email was sent, Respondent-Father had not asked to see William, but Petitioner-Mother offered him these options

because she believed William should have a relationship with Respondent-Father. Even though Respondent-Father did not respond to this email, Petitioner-Mother reached out to him again on 25 March 2017 to see if he would like to have lunch and see William. Respondent-Father told Petitioner-Mother lunch “sound[ed] good,” and they agreed to meet at a restaurant. After this lunch, Respondent-Father emailed Petitioner-Mother stating, “[it] was so great to see him – he’s amazing.” Petitioner-Mother responded, “I’m glad you two could spend some time together. Let me know your ideal schedule going forward – and we can work on a plan from there.”

Petitioner-Mother and Respondent-Father agreed he could see William two weeks from 25 March 2017 for one hour. This date and time worked best for Respondent-Father’s work schedule and William’s sleep schedule. In this same email exchange, Petitioner-Mother asked Respondent-Father what he could contribute financially for William during this agreement. When Respondent-Father asked what William needed, Petitioner-Mother reminded him of her previous email, and the request for tuition and healthcare assistance in the amount of \$1,200, half of William’s total tuition and healthcare costs. Respondent-Father did not respond. The following day, Petitioner-Mother sent a subsequent email to Respondent-Father stating: “Hello? Are you unable to assist [William] financially? If that is the case – that is fine. But please be open about your intentions.” Respondent-Father did not respond to this email either. At the termination hearing, Respondent-Father testified he did not respond because he did not have \$1,200 a month at that time to provide

William. Respondent-Father conceded he should have offered to pay something as small as \$100, but he felt \$1,200 was all she was willing to accept.

On 6 April 2017, Respondent-Father emailed Petitioner-Mother the following: “I funded the joint account for [William’s] expenses I have repeatedly told you I will pay for child support.” Petitioner-Mother responded to this email almost twelve hours later, stating:

I’m not ignoring you. I wouldn’t do that to you. But I’m still hesitant to respond[.] I want you and [William] to have a relationship. But your flip flopping is more than I can handle. And it isn’t good for him. I need to have a think about this before I respond.

Petitioner-Mother subsequently testified they did not have a joint account for William’s expenses, she did not know what account he was referencing, and he had never offered to pay child support.

On 8 April 2017, Petitioner-Mother told Respondent-Father she believed it was best if they communicated through their attorneys so William could depend on “something in writing” Petitioner-Mother asked Respondent-Father to send his lawyer’s information, and she would have her lawyer contact his. Respondent-Father did not respond.

On 26 April 2017, Respondent-Father emailed Petitioner-Mother notifying her of the insurance policy he purchased for William. Petitioner-Mother responded by telling Respondent-Father that William already had a policy. Respondent-Father replied, “[s]o for the record are you refusing to have me pay for [William’s] health

insurance?” Petitioner-Mother responded, “[h]e has health insurance, Tim. I am refusing to discuss anything with you without a lawyer.” Aside from this attempt, the only other financial contribution Respondent-Father made for William was \$1,200 to repay Petitioner-Mother for health insurance right after William was born.

On 26 June 2017, Respondent-Father sent William a “happy birthday email.” In response, Petitioner-Mother asked Respondent-Father to send all emails intended for William to an email address she created for William. She further wrote, “if you would like to see [William], please have your lawyer contact mine.” Respondent-Father asked Petitioner-Mother for her attorney’s contact information, which she gave him. In “July or August” 2017, Respondent-Father placed \$10,000 on retainer for an attorney who allegedly sent communications to Petitioner-Mother’s attorney. Respondent-Father did not recall how much he paid for this communication, or when exactly it was sent. Petitioner-Mother, however, was never billed for any legal work by her attorney in 2017 “because nothing happened.” From 2017 through 2021, Petitioner-Mother received no suggested visitation schedules, offers for child support, or suggested settlements. To Petitioner-Mother’s knowledge, Respondent-Father’s lawyer did not reach out to her lawyer until August 2020. Respondent-Father claimed he did not file anything related to custody of William because his attorney advised him to wait. Respondent-Father, however, also testified that the reason he did not file anything was because he did not have “\$1,000 a month, \$1,200 a month” to pay child support.

On 27 August 2018, Respondent-Father texted Petitioner-Mother from his email account and asked if they could get together to talk. Petitioner-Mother felt this text was “out of the blue” because they had not communicated since June 2017 aside from the one happy birthday email Respondent-Father sent William in July 2018. Petitioner-Mother did not respond to his request to talk. Petitioner-Mother was frustrated by these requests to “talk” because Respondent-Father never asked how William was doing, what he was like, what he needed, or if Respondent-Father could see William.

On 17 December 2018, Respondent-Father sent a text message to Petitioner-Mother, which stated, “[o]k – let’s be adults. We’re raising a child. [William] needs you and me too. Let’s do this together – he’s more important than either of our feelings.” That evening, he sent a follow up email to Petitioner-Mother asking if they could “get past the silly ‘I’m better than you’ and raise [William] together.” Petitioner-Mother did not respond to the email or text message. The following day, Respondent-Father sent a text message to Petitioner-Mother, which read: “[y]ou can make this difficult if you want to – [William] needs his father too. Let’s put aside our differences and focus on him. I will do anything to help him.” Petitioner-Mother claimed she did not receive any correspondence from Respondent-Father between the 27 August 2018 text and the 17 December 2018 email. She did not receive any of the above-mentioned December 2018 text messages because Respondent-Father’s number was still blocked.

Aside from an email sent on William’s birthday in 2019, the December 2018 email was the last message Petitioner-Mother received from Respondent-Father, until February 2020, when he sent her a congratulatory text regarding her recent engagement to William Harris Walker (“Walker”). The Record, however, includes screenshots of three text messages Respondent-Father sent Petitioner-Mother in February 2019, and one in June 2019. Respondent-Father claimed he sent her several text messages instead of emails because he did not know how long she would have his number blocked. In one of the February 2019 texts, Respondent-Father asked how William was doing, but Petitioner-Mother did not receive this text. In an undelivered June 2019 text, Respondent-Father said, in part, “I want [William] to have a father. How do we do this? He’s the most important thing in my world.” On 26 July 2019, Respondent-Father sent the following birthday email to William: “I miss you so much – there isn’t a day that I don’t wake up thinking about how special you are. I love you, Your Father.”

In March 2020, Respondent-Father decided he wanted to go forward with filing custody paperwork because he had recently sold some property and “was able to pursue this” because he had the funds to support William. Respondent-Father testified he did not have the “liquid assets” to provide for William until March 2020, and his “choice was to put it off” because he was unable to help William until then. Respondent-Father did not file any paperwork in March 2020, however, because his attorney advised him any filing at that time would be futile due to the Covid-19

pandemic.

In Spring 2020, although an exact date is unclear, Respondent-Father moved to a family home in Florida, which he shared with his brother. There is no evidence in the Record indicating Respondent-Father told Petitioner-Mother, either directly or through attorneys, of his move.

Between mid-March 2020 and April 2020, Petitioner-Mother, Walker, and William left Washington, D.C. to stay with Walker's parents in Boone, North Carolina. Petitioner-Mother and Walker were planning on moving to Rocky Mount, North Carolina, after their wedding, but moved into Walker's parents' house when the Covid-19 pandemic began in the United States. On 19 April 2020, Petitioner-Mother and Walker were married. Respondent-Father knew the couple was engaged, but it is unclear whether he knew when they married.

On 26 July 2020, Respondent-Father emailed William: "Not a day goes by without me thinking about you. I cannot wait to spend time with you again."

In August 2020, Petitioner-Mother, Walker, and William moved to a home in Rocky Mount, North Carolina. Petitioner-Mother did not personally tell Respondent-Father of the move, but she kept her attorney apprised of where she was living and what was going on in her life at all times in the event Respondent-Father reached out to her attorney and asked to see William. On 20 November 2020, Walker filed a petition to adopt William in Nash County District Court. On the same day, Petitioner-Mother filed a consent to adoption form, voluntarily consenting to the

adoption of William by Walker.

In December 2020, on the advice of his attorney, Respondent-Father moved back to Washington, D.C. to be closer to William. Respondent-Father entered a lease in Washington, D.C. for a three-bedroom home in a residential neighborhood, where William could have his own room. Respondent-Father did not know Petitioner-Mother and William had moved to North Carolina. Also in December 2020, Respondent-Father began his job as a financial controller for a healthcare company where, at the time of the termination hearing, he reportedly was earning a salary of \$150,000 per year.

On 26 July 2021, Respondent-Father emailed William on his birthday: “Happy Birthday! Hard to believe you’re five years old already. I hope you have a wonderful day. I miss you more than you can imagine – not a day goes by that I don’t think of you. I love you so much! Your Father.” This is the last correspondence Respondent-Father sent to William prior to the termination hearing.

On 26 February 2021, Petitioner-Mother filed a Petition for Termination of Parental Rights (the “Petition”) in Nash County District Court. Respondent-Father filed a response on 28 October 2021, asking the court not to terminate his parental rights. A hearing was held on the matter on the same day Respondent-Father filed his response. During the adjudication stage of the hearing, the trial court heard testimony from Respondent-Father, Petitioner-Mother, and Walker. Based on the testimony and email evidence set forth above, the trial court found grounds for

termination existed for abandonment by way of neglect under N.C. Gen. Stat. § 7B-1111 (a)(1) (2021) and abandonment under N.C. Gen. Stat. § 7B-1111 (a)(7) (2021).

The trial court then moved to the dispositional stage where it considered the best interests of William. The trial court heard testimony from Walker, Petitioner-Mother, and the guardian *ad Litem* assigned to the case. Walker testified to being a “constant part” of William’s life: attending school events, sports practices, and games; going to breakfast together every Saturday morning; helping with his homework; and doing any other “standard things a father and son would do together.” Walker contributes to William financially by sharing expenses equally with Petitioner-Mother. Walker testified he loves William very much and makes sure to tell him every day he is loved and special. Walker testified he wanted to adopt William because his love for him went beyond that of a friend or just “mom’s husband.” He further testified he understood adoption meant he would be responsible for William in all aspects.

Petitioner-Mother testified that Walker has been William’s father since before he was two years old, the two are very close, and Walker is “the best dad.” Petitioner-Mother and Walker wanted Walker to adopt William so they could all change their last names and “make it official.” She further testified that Walker consistently provides supervision, discipline, love and affection, and financial support. According to Petitioner-Mother, Respondent-Father has not consistently provided William with any of those things.

The guardian *ad Litem* testified to the report he filed with the trial court in which he did not recommended termination, as it would not be in William's best interests. The guardian *ad Litem* conceded it was a close call as to whether it was in William's best interests to terminate Respondent-Father's parental rights, but ultimately, he felt having a father and a stepfather would be a positive in William's life. The guardian *ad Litem* testified he believed William would be protected regardless of whether the court determined termination was in William's best interests because he was in a loving stable environment with Petitioner-Mother and Walker.

In the Order filed on 23 December 2021, the trial court concluded it was in William's best interests to terminate Respondent-Father's parental rights because to deny the adoption would be to deny William a loving family and stable environment. Respondent-Father filed timely notice of appeal on 10 January 2022.

II. Jurisdiction

This Court has jurisdiction to address Respondent-Father's appeal from the Order pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Issues

The issues before this Court are whether: (1) the trial court's challenged findings of fact are supported by clear, cogent, and convincing evidence; (2) the trial court's conclusions of law, that termination grounds existed, are supported by the findings of fact; and (3) it was in the child's best interests to terminate Respondent-

Father's parental rights.

IV. Analysis

Respondent-Father argues the trial court erred by concluding grounds existed to terminate his parental rights for abandonment pursuant to N.C. Gen. Stat. § 7B-1111(a)(7), or abandonment as a subspecies of neglect, pursuant to N.C. Gen. Stat. § 7B-1111(a)(1); and the trial court erred by failing to adequately consider the recommendation of the guardian *ad Litem* when determining termination was in William's best interests. We disagree.

“Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage.” *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020) (citation omitted); *see also* N.C. Gen. Stat. § 7B-1109 (2021); N.C. Gen. Stat. § 7B-1110 (2021). “[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights.” *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019) (citation omitted); *see also* N.C. Gen. Stat. § 7B-1110(a) (2021). If this Court “determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds.” *In re P.L.P.*, 173 N.C. App. 1, 8, 618 S.E.2d 241, 246 (2005) (citation omitted).

After the trial court determines at least one ground exists to support termination of parental rights in the adjudicatory stage, the trial court then proceeds to the dispositional stage to determine whether terminating the parent's rights is in

the juvenile's best interests. N.C. Gen. Stat. § 7B-1110(a). In making this determination, the trial court:

[S]hall consider the following criteria and make written findings regarding the following that are relevant:

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

N.C. Gen. Stat. § 7B-1110(a). The trial court is not required to make written findings on all factors, but it is required to “pass[] upon the credibility of the witnesses and the weight to be given to their testimony and the reasonable inferences to be drawn therefrom.” *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 168 (2016) (citation omitted) (alteration in original).

“The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether those findings, in turn, support the conclusions of law.” *In re Shepard*, 162 N.C. App. 215, 221–22, 591 S.E.2d 1, 6 (2004) (citation omitted). In reviewing the findings, we

consider “only those [challenged] findings necessary to support the trial court’s determination that grounds existed to terminate [the] respondent’s parental rights.” *In re M.C.*, 374 N.C. 882, 886, 844 S.E.2d 564, 567 (2020) (citation omitted) (first alteration in original). Findings of fact not challenged on appeal are binding. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.K.I.*, 279 N.C. 207, 2021-NCSC-131, ¶ 7 (citation omitted).

“The trial court’s assessment of a juvenile’s best interest[s] at the dispositional stage is reviewed only for abuse of discretion.” *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797 (citation omitted). “An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.” *In re G.G.M.*, 377 N.C. 29, 2021-NCSC-25, ¶ 23 (citation omitted).

A. Grounds for Termination of Parental Rights

In the instant case, the trial court concluded grounds existed to terminate Respondent-Father’s parental rights based on his neglect and abandonment of William. For reasons that follow, we affirm the trial court’s order with respect to abandonment under N.C. Gen. Stat. § 7B-1111(a)(7), and we will not review Respondent-Father’s argument regarding the grounds based on neglect. *See In re P.L.P.*, 173 N.C. App. at 8, 618 S.E.2d at 246.

Grounds for terminating parental rights to a juvenile exist under N.C. Gen. Stat. § 7B-1111(a)(7) when “the parent has willfully abandoned the juvenile for at

least six consecutive months immediately preceding the filing of the petition[.]” “Abandonment implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child.” *In re N.D.A.*, 373 N.C. 71, 77, 833 S.E.2d 768, 733 (2019) (citation omitted). “The word willful encompasses more than an intention to do a thing; there must also be purpose and deliberation.” *In re D.E.M.*, 257 N.C. App. 618, 619, 810 S.E.2d 375, 377 (2018) (citation omitted). The trial court should consider factors such as the “parent’s financial support for [the] child and emotional contributions, such as a father’s display of love, care and affection for his children.” *Id.* at 619, 810 S.E.2d at 377 (citation and internal quotation marks omitted). “Although the trial court may consider a parent’s conduct outside the six-month window in evaluating a parent’s credibility and intentions, the ‘determinative’ period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition.” *In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 768 (citation omitted).

On appeal, Respondent-Father challenges several of the trial court’s findings that support the ground for termination based on Respondent-Father’s abandonment of William. We address each argument in turn.

1. Challenges to Findings of Fact

a. *Challenges to Findings of Fact 26, 27, and 48*

Respondent-Father argues findings of fact 26, 27, and 48 are unsupported by clear, cogent, and convincing evidence because email and text message evidence in

the Record shows he had an interest in raising William.

(i) Finding of Fact 26

Respondent-Father challenges Finding of Fact 26 as being unsupported by clear, cogent, and convincing evidence. Finding of Fact 26 states: “[a]t no time from March 29, 2017 to the date of the hearing had Respondent asked Petitioner to see the minor child.”

Respondent-Father contends the email evidence in the Record shows he emailed Petitioner-Mother on 6 April 2017 stating, in relevant part, “I do want to see [William]” Respondent-Father, however, did not specifically ask to see, or spend time with William after March 2017. His email expresses a somewhat abstract desire to see William and spend time with him, but there is no evidence in the Record Respondent-Father specifically asked to see William after 29 March 2017.

Thus, Finding of Fact 26 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(ii) Finding of Fact 27

Next, Respondent-Father argues Finding of Fact 27 is not supported by clear, cogent, and convincing evidence unless a narrow and literal “magic” reading of the words is used because the emails on Record show he continuously demonstrated interest in William. We disagree.

Finding of Fact 27 provides “[a]t no time since March 29, 2017 had Respondent inquired of Petitioner as to the minor Child, such as how he was, what his interests

were, or the like.” Respondent-Father did not have to literally ask Petitioner-Mother what William’s interests were or how he was doing, but there is no evidence in the Record showing Respondent-Father inquired about William’s interests or well-being in any meaningful way. There is evidence in the Record showing Respondent-Father asked how William was, via a text message sent to Petitioner-Mother on 2 February 2019. Testimonial evidence given by Petitioner-Mother, however, indicated she never received this text because she blocked Respondent-Father’s number, which he knew. Moreover, even accepting Respondent-Father’s argument that he continued to inquire about and show interest in William, there is zero correspondence sent in the six months preceding Petitioner-Mother’s filing of the Petition on 26 February 2021, which is the determinative period when considering abandonment. *See In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 768.

Finding of Fact 27, therefore, is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(iii) Finding of Fact 48

Lastly, Respondent-Father challenges the portion of Finding of Fact 48, which states: “Respondent . . . has shown no legitimate interest in rearing the Child.”

To support Respondent-Father’s argument that the challenged portion of Finding of Fact 48 is not supported by clear, cogent, and convincing evidence, Respondent-Father argues the emails and texts he sent Petitioner-Mother asking to talk about William’s future in 2017 and 2018 show his intention to be a part of

William's life. Respondent-Father specifically points to an email he sent to Petitioner-Mother inquiring of William on 6 April 2017, which provided, in part, "I do want to . . . be an important part of his life. . . . I will pay child support. I want to be listed on the birth certificate as his father."

Aside from this statement, Respondent-Father never made, or attempted to make, child support payments to William. As for the birth certificate, despite Respondent-Father's repeated contentions he wanted to be listed on William's birth certificate, he did not provide Petitioner-Mother with the paperwork necessary to have his name added when Petitioner-Mother asked for it. Instead, when presented with the opportunity to add his name to the birth certificate, he told Petitioner-Mother, "you do it."

Moreover, the correspondences sent in 2018 were sent after Petitioner-Mother asked Respondent-Father to contact her through their respective attorneys. Had Respondent-Father sought a serious discussion regarding William's future or negotiating a parenting plan, he could have had his attorney contact Petitioner-Mother's attorney. Absent any tangible action taken by Respondent-Father to show he had an interest in raising William, these emails do not evince a *legitimate* interest in raising William.

Even if we were to find these correspondences evince Respondent-Father showed a legitimate interest in being an active part of William's life, they took place well outside the relevant six-month window. *See In re N.D.A.*, 373 N.C. at 77, 833

S.E.2d at 768.

Thus, Finding of Fact 48 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

b. Challenges to Findings of Fact 31, 33, 41, and 52

Next, Respondent-Father argues findings of fact 31, 33, 51, and 52 are unsupported by the evidence because he did not have “meaningful access” to William, and his attempts at negotiations were one-sided. We will address each challenged finding in turn.

(i) Finding of Fact 31

First, Respondent-Father challenges Finding of Fact 31, which provides:

At no time did Petitioner ever deny Respondent access to the minor Child. Petitioner maintained the same email address she had at the time of the Child’s birth to the date of the hearing, and Respondent sent Petitioner emails to that address that she received in 2018 and 2019.

There is no evidence in the Record showing Petitioner-Mother denied Respondent-Father access to William. On 29 March 2017, the only time Respondent-Father specifically asked to see William, Petitioner-Mother told him his proposed time did not work because of William’s sleep schedule but agreed to schedule visitation at a time that worked best for both parties. Respondent-Father did not ask to see William again after March 2017 despite Petitioner-Mother telling him if he wanted to see William, he needed to contact her attorney.

Lastly, Petitioner-Mother has had the same email address at all relevant

times. Respondent-Father was able to communicate with Petitioner-Mother through this email address as the Record indicates he had done from 2017 through 2020.

Thus, Finding of Fact 31 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(ii) Finding of Fact 33

Second, Respondent-Father challenges the last sentence of Finding of Fact 33 which states: “Respondent continued to have contact information and access to Petitioner through email, cell phone, and through Petitioner and Respondent’s respective attorneys.” Respondent-Father argues he did not have “meaningful access” at all relevant times because Petitioner-Mother blocked his cell phone number and negotiations were one-sided.

It is undisputed Respondent-Father had access to William through email at all relevant times. Further, evidence in the Record and hearing testimony shows Respondent-Father was able to send text messages to Petitioner-Mother from his email address, and at some time after 2017 received a new number which was not blocked. Moreover, negotiations were not one-sided because the negotiations were non-existent. Respondent-Father did not make any meaningful attempts to begin negotiations. Respondent-Father did not file any paperwork or initiate negotiations in March 2020 despite testifying that he wanted to file paperwork at that time. Respondent-Father argues he attempted to reinstate negotiations in August 2020, but was “rebuffed” by Petitioner-Mother’s attorney. Had Respondent-Father been

serious about negotiating visitation or custody, he could have filed a petition for custody if he felt Petitioner-Mother and her attorney were unwilling to meaningfully negotiate.

Thus, Finding of Fact 33 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(iii) Finding of Fact 41

Third, Respondent-Father challenges Finding of Fact 41 without making any specific argument for how the finding is not supported by clear, cogent, and convincing evidence. Finding of Fact 41 provides:

Respondent contended throughout the trial that he was denied access to the Child, but he was not. There was no evidence presented to the Court that showed any activity on the part of Petitioner to deny the Child to Respondent or to deny Respondent access to the Child. Rather, Petitioner provided options for visitation, before expressing a desire to come to terms through attorneys.

Email evidence in the Record shows Petitioner-Mother coordinated visits between Respondent-Father and William, whenever Respondent-Father requested to see William; sent multiple parenting plan options before and after William was born; and told Respondent-Father to reach out to her attorney if he wanted to schedule visitation. There is no evidence of Petitioner-Mother ever denying Respondent-Father access to William.

Finding of Fact 41, therefore, is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(iv) Finding of Fact 52

Lastly, Respondent-Father challenges Finding of Fact 52, which provides: “Respondent has had, at all times relevant hereto, the means and ability to have a relationship with the Child.”

There is ample evidence in the Record showing Petitioner-Mother encouraged Respondent-Father to have a relationship with William from the time he was born. She reached out to him to set up visits, and sent him multiple parenting plans before and after William’s birth. Even after Respondent-Father ignored her two parenting options in March 2017, Petitioner-Mother reached out again to invite him to have lunch with her and William. She continually expressed her desire for Respondent-Father to be a part of William’s life. In their April 2017 email exchange, Respondent-Father stated he loved William, he wanted to support him, and he wanted to be a part of his life. Petitioner-Mother agreed she wanted Respondent-Father to have a relationship with William, but Respondent-Father’s “flip-flopping” was more than she could handle, it was not good for William, and she felt it was best if they communicated through their attorneys. Respondent-Father, therefore, had the ability to schedule visitation with William through their respective attorneys, and Petitioner-Mother did not deny him access to William.

Thus, Finding of Fact 52 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

c. Challenges to Findings of Fact 35, 43, 36, and 50

Respondent-Father challenges findings of fact 35, 43, 36, and 50, which determined he willfully failed to support William.

(i) Finding of Fact 35

First, Respondent-Father challenges only the portion of Finding of Fact 35 that states he “went into business for himself” as an “oyster farmer” in 2017. During the hearing, Respondent-Father testified he began his oyster farming venture in 2013. According to Respondent-Father, this shows his financial issues began long before William was born. Finding of Fact 35 is not supported by the evidence so far as it claims Respondent-Father began working as an oyster farmer in 2017, but it does not negate the court’s other findings showing Respondent-Father was financially capable of providing *some* support to William.

(ii) Finding of Fact 43

Second, Respondent-Father contends Finding of Fact 43 is not supported by the evidence because he did not have the financial means to support William at all relevant times, and Petitioner-Mother told him to stop sending gifts. Finding of Fact 43 provides:

Respondent has at all times had the ability to provide some financial support to Petitioner for the benefit of the minor Child, whether in the form of money to Petitioner for use for the Child or in purchasing items for the Child, but he chose not to do so other than the items delivered to Petitioner’s doorstep in February and March, 2017 that were not requested.

This finding is supported by Respondent-Father’s testimony that he could not provide

\$1,200 a month, but he could have provided a smaller sum, such as \$100. The evidence is clear Respondent-Father had the means to provide support for William financially or by purchasing items because he had done so in the past.

Further, Respondent-Father testified to having the financial resources to begin custody proceedings in March 2020, and he began a job in December 2020 where his annual salary was \$150,000. Respondent-Father was capable of providing financial support to William in the six months prior to Petitioner-Mother filing the Petition. *See In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 768.

Thus, Finding of Fact 43 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(iii) Finding of Fact 36

Third, Respondent-Father challenges one sentence in Finding of Fact 36, which states: “Respondent continued to have three places of residence, one in Northern Virginia, a boat and boat slip in Washington, D.C. and a home in Florida where he lives with his brother.” Respondent-Father argues this statement “implies” the existence of Respondent-Father’s residential holdings meant Respondent-Father had the means to contribute to child support. These findings are supported by Respondent-Father’s own testimony of maintaining homes in three different states. Despite Respondent-Father’s inference regarding Finding of Fact 36, the finding simply states he maintained three residences, which is supported by Respondent-Father’s own testimonial evidence.

Thus, Finding of Fact 36 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(iv) Finding of Fact 50

Lastly, Respondent-Father challenges Finding of Fact 50, which states: “Respondent’s failure to provide substantial financial support for Petitioner and the Child or consistent care with respect to the Child and Petitioner has been willful.”

Respondent-Father argues his failure to financially support William was not willful because Petitioner-Mother told him not to send gifts and refused the insurance policy he purchased for William. The Record, however, shows Petitioner-Mother never asked him to stop sending things, but instead requested he deliver them in a public place or send them to a Post Office box she would set up for him. The second time he brought gifts, Petitioner-Mother reiterated her request he refrain from dropping things off at her home, and told Respondent-Father, “she would be more than happy” to meet him in a public place or set up a Post Office box.

There is also evidence showing Petitioner-Mother asked Respondent-Father for \$1,200 a month to assist in covering William’s health insurance and daycare costs. In the same email requesting \$1,200, Petitioner-Mother also stated she would accommodate Respondent-Father “as much as possible.” Instead of providing her with any tangible funds, Respondent-Father bought William a separate insurance policy, which William did not need. Evidence of Respondent-Father’s past instances of giving William gifts and basic everyday essentials, and his ability to pay for a

health insurance policy, show he was able to provide some financial support to William.

Therefore, Finding of Fact 52 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

d. Challenges to Findings of Fact 42, 46, 53, and 54

Finally, Respondent-Father argues the findings of fact determining his actions evinced a willful purpose to forego his parental duties are not supported by clear, cogent, and convincing evidence. Each finding of fact concluding Respondent-Father’s actions were willful will be addressed in turn.

(i) Finding of Fact 42

First, Respondent-Father challenges Finding of Fact 42, which states: “Respondent has shown no real interest with regard to raising or supporting financially the child.” Specifically, Respondent-Father argues the litany of emails and texts he sent Petitioner-Mother regarding William from February 2017 through July 2021 show he did not willfully forego all parental duties and relinquish all parental claims. Respondent-Father contends he consistently sent emails to William where he: asked multiple times to be listed on his birth certificate; expressed on several occasions his desire to be in William’s life; offered to pay child support; and stated it would be in William’s best interests to have his father in his life. While these emails may evince *some* interest with regard to raising William, they do not indicate real interest because Respondent-Father never followed up these statements by

negotiating visitation or sending financial support.

Moreover, the Record shows Petitioner-Mother emailed Respondent-Father on 7 March 2017 explaining how he could contribute to William financially. Respondent-Father did not respond. On 29 March 2017, Respondent-Father asked Petitioner-Mother what William needed financially, to which Petitioner-Mother reiterated her previous request for \$1,200, half of William's monthly daycare and insurance costs. Respondent-Father did not respond. On 30 March 2017, Petitioner-Mother sent Respondent-Father a follow up email asking if he was able to assist William financially. Respondent-Father did not respond.

Respondent-Father claimed he funded the joint account for William's expenses, but Petitioner-Mother testified that no such account existed, and she never received any money from Respondent-Father from 2017 through the time the hearing was held in 2021. It is also clear none of these correspondences took place between the relevant six month window. *See In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 768. Respondent-Father's lack of action to support William financially during the relevant six month window shows he had no *real* interest in raising or financially supporting William.

Thus, Finding of Fact 42 is "supported by clear, cogent and convincing evidence." *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(ii) Finding of Fact 46

Second, Respondent-Father challenges Finding of Fact 46, which states:

Respondent has put forth no actual or material effort

toward gaining any access to the minor Child, to see the minor Child, have any time with the minor Child, to express any love or concern for the minor Child or provide any financial support to the minor Child that would evidence a desire to be a parent to the minor Child despite having the ability to do so.

Respondent-Father never put forth material effort to gain access to William. From the time Petitioner-Mother asked him to contact her through their respective attorneys on 7 April 2017 until 2020, Respondent-Father did not ask to see William, contact her attorney, or attempt to negotiate a parenting plan or visitation schedule. Respondent-Father was aware he needed to contact Petitioner-Mother's attorney if he wanted to set up visitation with William, but he never did. This shows a willful purpose to forego his parental rights.

Thus, Finding of Fact 46 is "supported by clear, cogent and convincing evidence." *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6..

(iii) Finding of Fact 53

Third, Respondent-Father challenges Finding of Fact 53, which states: "Respondent's failure to have a relationship with the Child has been willful on his part." As we have discussed, Respondent-Father's failure to have a relationship with William was willful because he did not set up visitation through his and Petitioner-Mother's respective attorneys despite Petitioner-Mother's repeated requests he do so. Further, Respondent-Father provided William with no financial support, gifts, or any tangible items within the six month window indicating he wanted a fatherly

relationship with William. *See In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 768.

Thus, Finding of Fact 53 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

(iv) Finding of Fact 54

Fourth and finally, Respondent-Father challenges Finding of Fact 54, which provides: “Respondent’s acts, or inaction, reflect a settled purpose to forego all parental rights and obligations.” This finding is supported by the lack of action Respondent-Father took to see William, support William, or be a part of William’s life in any meaningful way.

Thus, Finding of Fact 54 is “supported by clear, cogent and convincing evidence.” *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6.

2. Challenge to Conclusion of Abandonment

Respondent-Father contends the trial court erred by concluding he abandoned William because there is no evidence of “willful intent to forego his parental rights.” We disagree.

Our Supreme Court has reviewed facts similar to the present case in *In re C.K.I.*, 379 N.C. at 211, 864 S.E.2d at 323. In *C.K.I.*, the respondent-father did not initiate legal proceedings to force the petitioner-mother to allow him to see his child, but he did take steps towards that goal by telling the petitioner-mother he wanted to be in his child’s life, wanted to see the child, and “was going to be a father” to the child. *Id.* at 214–15, 864 S.E.2d at 328. Our Supreme Court found these efforts were

inadequate when the respondent-father had not seen his eleven-year-old child since he was four-to-six months old; he did not contact the child; and he did not send money, gifts, cards, or letters. *Id.* at 215, 864 S.E.2d at 329.

Similar to the respondent-father in *C.K.I*, Respondent-Father here may have taken some steps towards supporting William, such as retaining an attorney, maintaining lucrative employment, and establishing a residence with a room for William; the facts show, however, a lack of actual care, support, and maintenance of William. Respondent-Father did not send any financial support to William even after obtaining employment with an annual salary of \$150,000 in December 2020. Respondent-Father may have told Petitioner-Mother he wanted to be in William's life, but he did not specifically ask to see William or negotiate a visitation plan. Moreover, Respondent-Father went nearly five years without sending money, gifts, cards, or letters to William. Respondent-Father consistently sent emails on William's birthday, but a young child is unable to read or understand an email. Sending annual birthday emails to a small child is not the same as displaying fatherly "love," "care," and "affection." *See In re A.A.*, 381 N.C. 325, 2022-NCSC-66, ¶ 23 (concluding grounds of abandonment existed where the respondent-mother did not visit minor child; did not provide minor child with any correspondence, gifts, affection, or support; and did not in any manner evince a desire to engage in parental duties within the relevant six-month time period).

On 26 February 2021, Petitioner-Mother filed the Petition seeking to have

Respondent-Father's parental rights to William terminated; the determinative six-month window therefore began on 26 August 2020. Respondent-Father did not text or email Petitioner-Mother concerning William during this six-month period. The last email on record Respondent-Father sent to William is a birthday message dated 26 July 2021, exactly one month before the six-month window.

Respondent-Father provided no explanation for his absence in those six months, but instead argues his actions, or inactions, were not willful, because any attempts to contact William were frustrated by Petitioner-Mother because she did not respond to any of his emails or text messages. We have reviewed, however, Petitioner-Mother's repeated requests for Respondent-Father to contact her attorney if he wanted to see William. We have also reviewed Respondent-Father's various reasons for not making contact via attorneys.

Respondent-Father claims he wanted to petition for custody in March 2020, but refrained because his attorney advised him the courts were closed because of Covid-19, and a filing at that time would be futile. Respondent-Father allegedly attempted to open custody negotiations in August 2020, but was informed by Petitioner-Mother's counsel that Petitioner-Mother's father had just died, and she needed time to process, a representation on which he claims to have relied. Even if this attempt at negotiations occurred within the six-month window, it would be insufficient to show he did not willfully abandon William. *See In re Apa*, 59 N.C. App. 322, 324, 296 S.E.2d 811, 813 (1982) (trial court did not err in concluding minor child

was abandoned where respondent-father “made no other significant attempts to establish a relationship with [the minor child] or obtain rights of visitation with [the child,]” “except for an abandoned attempt to negotiate visitation and support”); *see also In re I.R.M.B.*, 377 N.C. 64, 2021-NCSC-27, ¶19 (finding grounds of abandonment where the respondent-father was aware of his ability to seek legal custody and visitation rights but took no action during the determinative six-month period).

Therefore, we conclude the trial court’s findings of fact support its conclusion of law that grounds existed to terminate Respondent-Father’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(7) because he made no effort be a fatherly presence in William’s life in the relevant six-month window. *See In re N.D.A.*, 373 N.C. at 77, 833 S.E.2d at 768,

Based on testimony presented at trial, clear, cogent, and convincing evidence existed to support a basis for all findings of fact challenged by Respondent-Father, which in turn support the conclusion Respondent-Father willfully abandoned William. *See In re Shepard*, 162 N.C. App. at 221–22, 591 S.E.2d at 6. Having affirmed the trial court’s ground for termination based on abandonment, we will not review Respondent-Father’s argument regarding the grounds based on neglect. *See In re P.L.P.*, 173 N.C. App. at 8, 618 S.E.2d at 246.

B. Best Interests

Respondent-Father does not challenge any findings of fact made during the

dispositional stage; they are, therefore, binding on appeal. *See In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 65. Respondent-Father, instead, argues the trial court abused its discretion by concluding it was in William's best interests to terminate Respondent-Father's parental rights without making any findings as to the guardian *ad Litem's* recommendation that termination was not in William's best interests. We disagree.

"While the role of the guardian [*ad Litem*] is critical in every juvenile case, with the testimony and reports of the guardian [*ad Litem*] serving as important evidence at every phase of a case's proceeding, nonetheless a guardian [*ad Litem's*] recommendation regarding the best interests of a juvenile . . . is not controlling." *In re A.A.*, 381 N.C. 325, 2022-NCSC-66, ¶ 29. "Rather, 'because the trial court possesses the authority to weigh *all* of the evidence, the mere fact that it elected not to follow the recommendation of the guardian *ad [L]item* does not constitute error,' let alone an abuse of discretion." *Id.* ¶ 29 (emphasis in original) (internal citation omitted). Respondent-Father argues this case is distinguishable from *A.A.* because, unlike *A.A.*, the trial court in this case did not consider the report or testimony of the guardian *ad Litem* in the Order. We do not find this argument persuasive.

The trial court was not required to make written findings of fact regarding the testimony and report of the guardian *ad Litem*. The trial court is only required to make written findings of fact for those relevant factors enumerated in N.C. Gen. Stat. § 7B-1110(a), and the recommendation of a guardian *ad Litem* is not one of those

factors.

Therefore, because the trial court was not required to make written findings of fact regarding the guardian *ad Litem*'s recommendation, *see In re D.L.W.*, 368 N.C. at 843, 788 S.E.2d at 168, and no other dispositional findings are challenged on appeal, *see In re Z.L.W.*, 372 N.C. at 437, 831 S.E.2d at 65, the trial court did not abuse its discretion in finding it was in William's best interests to terminate Respondent-Father's parental rights. *See In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797.

V. Conclusion

We hold the trial court did not err in concluding grounds existed to terminate Respondent-Father's parental rights pursuant to N.C. Gen. Stat. § 1111(a)(7). We further hold the trial court did not abuse its discretion in finding termination of Respondent-Father's parental rights was in William's best interests.

AFFIRMED.

Judges ZACHARY and RIGGS concur.

Report per Rule 30(e).