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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-540

Filed 18 April 2023

Cleveland County, No. 20JT29

IN RE: I.W.

Appeal by Respondent from Order entered 25 August 2021 by Judge Justin K. Brackett in Cleveland County District Court. Heard in the Court of Appeals 21 March 2023.

*No brief filed on behalf of petitioner-appellee mother.*

*Stam Law Firm, PLLC, by R. Daniel Gibson, and Parent Defender Wendy C. Sotolongo, by Assistant Parent Defender Joseph L. Gilliam, for respondent-appellant father.*

HAMPSON, Judge.

**Factual and Procedural Background**

Respondent-Father appeals from the trial court's Termination of Parental Rights Order (Termination Order) entered 25 August 2021, which adjudicated grounds to terminate Respondent-Father's parental rights in his minor child

pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) and further determined it was in the best interests of the child to terminate Respondent-Father's parental rights. The Record before us tends to reflect the following:

Respondent-Father was incarcerated from January 2013 to 25 April 2021. On 2 April 2020, Petitioner-Mother filed a Petition to Terminate Parental Rights (Petition) pursuant to N.C. Gen. Stat. §§ 7B-1103(a)(1) and 7B-1104. The Petition alleged grounds exist to terminate the parental rights of Respondent-Father pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (4), (7) and alleged in relevant part:

That the Respondent Father has had no meaningful contact with the minor child, does not support the minor child financially or emotionally, and that the minor child does not know the respondent.

That the Respondent Father has been incarcerated since approximately 2012 and has had little to no contact with the minor child during that time.

Even before the Respondent went to prison, he had very little contact with the minor child. He did not provide any help with raising her emotionally or financially.

. . . .

The respondent ha[s] failed to support the minor child for a period of twelve continuous months.

[T]he respondent has willfully abandoned the minor child, failing to play any role in the child's life.

On 25 August 2021, the trial court entered its Order adjudicating a ground to terminate Respondent-Father's parental rights on the sole basis of willful abandonment.<sup>1</sup> The trial court found in relevant part:

8. . . . [T]he Respondent has had no meaningful contact with the minor child; that he did attempt to make some phone calls to the child and to the Petitioner directly as well as through family members, but the telephone calls were not consistent. Per the testimony of . . . the biological father's sister, these calls usually occurred in the evening. It has been noted that the Petitioner did not answer at times, but the court finds the phone calls were not regular and consistent whatsoever to establish a bond between the father and the minor child.

9. That the Petition was filed on April 2, 2020. The relevant time period for the termination is October 12, 2019 thr[ough] Ap[r]il 2, 2020.

10. The Respondent did send some cards and letters, but could not provide dates for any of these. There were pictures that the Respondent had drawn that he sent to the minor child in 2015 along with a certificate in 2018. There was a letter sent to the minor child through the Respondent's attorney in 2021 after the filing of the Petition.

11. That the Respondent did provide some monies during his incarceration through his sister. [His sister] testified that this amount was less than \$200.00. That the majority of any extra financial support came from Respondent's family, not the Respondent himself.

12. That the few actions of the Respondent were not within the 6 month time period of filing this action and they were not significant enough to evidence that the respondent has not willingly abandoned the minor child.

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<sup>1</sup> The trial court expressly rejected failure to provide support as a ground to terminate Respondent-Father's parental rights.

Having adjudicated one ground to terminate Respondent-Father's parental rights, the trial court further determined the proper disposition in the best interests of the minor child was to terminate Respondent-Father's parental rights. Respondent-Father timely filed written Notice of Appeal.

**Issue**

The dispositive issue on appeal is whether the trial court erred in terminating Respondent-Father's parental rights on the grounds of willful abandonment during the relevant six-month period.

**Analysis**

Respondent-Father contends the trial court erred in failing to consider Respondent-Father's incarceration when determining Respondent-Father's alleged abandonment was willful. We disagree.

"This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the findings of fact support the court's conclusions of law." *In re C.J.H.*, 240 N.C. App. 489, 497, 772 S.E.2d 82, 88 (2015) (citation omitted). "Findings of fact supported by competent evidence are binding on appeal even though there may be evidence to the contrary." *In re S.R.G.*, 195 N.C. App. 79, 83, 671 S.E.2d 47, 50 (2009) (citation omitted). Respondent-Father contends the trial court erred in finding "the few actions of the Respondent were not within the 6 month time period of filing this action and they were not significant

enough to evidence that the respondent has not willingly abandoned the minor child.” However, we note, and Respondent-Father concedes, neither party presented evidence as to when most of Respondent-Father’s actions occurred. As noted in Finding 10, the evidence showed Respondent-Father sent the pictures and certificate several years prior to the filing of the Petition. As such, Respondent-Father’s contention is without merit, and the trial court’s Findings of Fact are binding on appeal. *Id.*

Parental rights may be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) if “[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion[.]” N.C. Gen. Stat. § 7B-1111(a)(7) (2021). “The word ‘willful’ encompasses more than an intention to do a thing; there must also be purpose and deliberation.” *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986) (citation omitted).

We further note “[o]ur precedents are quite clear—and remain in full force—that [i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision.” *In re M.A.W.*, 370 N.C. 149, 153, 804 S.E.2d 513, 517 (2017) (alterations in original) (citation and quotation marks omitted). “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.*’ ” *In re A.G.D.*, 374 N.C. 317, 320, 841 S.E.2d 238, 240 (2020) (emphasis and alteration in original) (quoting *In re C.B.C.*, 373 N.C. 16, 19-20, 832 S.E.2d 692,

695 (2019) (citation omitted)). “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.” *Id.* (citing *In re K.N.*, 373 N.C. 274, 283, 837 S.E.2d 861, 867-68 (2020)).

On the Record before us, there is no evidence Respondent-Father made any effort to pursue a relationship with the minor child in the six months preceding the filing of the Petition. Although the fact that Respondent-Father was incarcerated “created obvious obstacles to [his] ability to show love, affection, and parental concern for the [minor child], it did not render a showing completely impossible.” *A.G.D.*, 374 N.C. at 327, 841 S.E.2d at 244. Other options for showing love, affection, and parental concern remained open to Respondent-Father; however, the Record before us reflects Respondent-Father failed to utilize those other options to have any contact with the minor child during the determinative six-month period. *See In re B.S.O.*, 234 N.C. App. 706, 711, 760 S.E.2d 59, 64 (2014) (affirming termination of the respondent-father’s parental rights based on willful abandonment where, in the relevant six-month period, the respondent-father “made no effort” to remain in contact with the children or their caretakers and did not provide anything toward their support). Thus, the effect of a decision to overturn the trial court’s Termination Order would be to allow Respondent-Father to use his incarceration as a shield against a finding

of willful abandonment—contrary to the consistent decisions of our Courts. *See M.A.W.*, 370 N.C. at 153, 804 S.E.2d at 517. Therefore, the trial court did not err in determining grounds exist to terminate Respondent-Father’s parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). Consequently, we affirm the trial court’s Termination Order.

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court’s 25 August 2021 Termination Order.

AFFIRMED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).