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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-686

Filed 06 June 2023

Yadkin County, Nos. 18 JT 47, 48, 49, 50, 51, 52

IN THE MATTER OF: Z.R.B., E.J.R., M.J.R., E.K.J.R., N.R.J., and A.E.F.

Appeal by respondent-fathers from order entered 8 June 2022 by Judge Donna Shumate in Yadkin County District Court. Heard in the Court of Appeals 9 May 2023.

Law Office of James N. Freeman, Jr., P.C., by James N. Freeman, Jr., for Yadkin County Human Services Agency, petitioner-appellee.

Leslie Rawls for respondent-father Mr. R.

Law Office of Jason R. Page, PLLC, by Jason R. Page, for respondent-father Mr. F.

Nelson Mullins Riley & Scarborough LLP, by Carrie A. Hanger, for Guardian ad Litem.

ARROWOOD, Judge.

Respondent-father N.R. (“Mr. R”) and respondent-father A.F. (“Mr. F”), (collectively, “respondents”) appeal from an order terminating their parental rights to E.J.R. (“Emilio”), M.J.R. (“Maurice”), E.K.J.R. (“Enzo”), N.R.J. (“Nick”), and A.E.F.

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(“Andre”), (collectively, the “children”).¹ Mr. R is the father of Emilio, Maurice, Enzo, and Nick; Mr. F is the father of Andre. The order also terminated the parental rights of Ms. B, the minor children’s mother, and the parental rights to her sixth child, Z.R.B.² For the following reasons, we affirm.

I. Background

On 18 May 2018, Yadkin County Human Services Agency (“YCHSA”) received a Child Protective Services report alleging the minor children suffered from “neglect[] due to abandonment and injurious environment.” According to the report, Ms. B left one of the children in the care of her mother (“maternal grandmother”) for the previous three weeks and dropped off her twenty-one-month-old twins, Maurice and Emilio, the previous day for what was purported to be “just a few hours.” Prior to dropping the twins off, Ms. B had also left Nick with the maternal grandmother. When Ms. B returned to get Nick, the maternal grandmother requested that she take the twins as she “did not have the means to provide” adequate care, but Ms. B refused. The report contended further that Ms. B did “not have the means to provide care for the children” as she only had “[two] diapers, no clothes[,]” food or juice, and appeared “overwhelmed” due to her husband, Mr. R’s, incarceration.

¹ Pseudonyms as designated by the record on appeal are used to protect the identity of the minor children.

² The father of Z.R.B. is also a subject of the trial court’s order. Neither of whom are parties to this appeal.

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In her response to YCHSA, Ms. B stated that she had recently lived with Mr. R until he was incarcerated and “the power was cut off.” At that point, she began staying with Mr. Simmons, a friend of hers, and “planned to take all [six] children” to stay at his residence. A YCHSA social worker went to Mr. Simmons’s residence to verify the living arrangements, however, Mr. Simmons was unaware that Ms. B had six children and “he had no intention of allowing that many people to stay in his home.” Mr. Simmons reported that Ms. B and three of the children already stayed with him, but they needed to move out “by the end of the month.” Thereafter, Ms. B expressed that “she had no money and no one to help her[,]” and “no one else to turn to for a place” she and the children could reside. On 21 May 2018, YCHSA filed a juvenile petition alleging the minor children were neglected and received an order for nonsecure custody that same day.

On 9 August 2018, a hearing for adjudication and disposition was held. Mr. R, although incarcerated at Piedmont Correctional Institute, was present for the hearing. Mr. F was not served with summons and process as his whereabouts were unknown, but he was “believed to be incarcerated out-of-state.” The children were adjudicated neglected in an order entered 20 September 2018.

The ninety-day review hearing was conducted on 18 October 2018. Mr. F’s location remained unknown. Mr. R entered into an Out of Home Family Services Agreement (“OHFSA”) which included: submitting to psychological and substance abuse assessments and completing “recommendations by the assessor[;]” completing

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“a parenting education program[;]” securing “safe and appropriate housing for at least three months[;]” maintaining “employment for at least three months[;]” avoiding additional criminal charges; and sustaining contact with “YCHSA on at least a monthly basis.”

The court noted that despite Mr. R’s incarceration, he had spoken to the children via telephone on multiple occasions, sent letters, and “appear[ed] to [have] a bond” with them. Accordingly, the court concluded that reunification as the primary permanent plan and guardianship as the secondary permanent plan were in the children’s best interests. Respondents were granted biweekly visitation for at least one hour per visit, “contingent upon [them] not being incarcerated.”

A permanency planning review hearing was conducted on 16 May 2019. Mr. F’s location continued to be unknown. Regarding Mr. R, he was released from incarceration in November 2018 and moved to Wilmington, North Carolina “in search of job opportunities.” He did not visit the children upon his release. With respect to his OHFSA, the trial court found he was making “adequate progress within a reasonable period of time[.]” Mr. R had completed: “the substance abuse portion[;]” the “parenting education portion during his incarceration[;]” secured employment and provided proof of income; “maintained regular contact with” YCHSA; avoided criminal charges; and was living in a group home for individuals on probation. Visitation rights continued to be available to respondents and the primary plan remained reunification; the secondary permanent plan changed to adoption.

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Mr. F was released from prison on 28 June 2019 and residing in Vermont when he contacted YCHSA on 12 July 2019. During the July call, Mr. F informed the social worker that he had not seen Andre since 2010, but was “in a place to resume custody[.]” YCHSA provided him with the number to the clerk of court and informed him he must “surrender himself to the jurisdiction of the court” and demonstrate “stability in employment/housing” and indicate the “ability to financially provide for [Andre].” Mr. F travelled to North Carolina and appeared for the hearing scheduled on 1 August 2019, but it was continued to the following month.

Respondents were not present at the second permanency planning review hearing conducted on 12 September 2019. In an order entered 15 October 2019, the trial court found further efforts to reunify respondents with the minor children “would clearly be unsuccessful and inconsistent with [their] health and safety.” The trial court’s findings indicated that Mr. R had still not completed a psychological assessment, had not obtained secure housing for the children, and failed to maintain regular contact with YCHSA. Additionally, he had not visited the minor children since placement in YCHSA custody, and while he “had made some calls . . . to them” he did not consistently do so. With respect to Mr. F, the trial court stated “[t]he whereabouts of [Mr. F] have been unknown for the majority of the life of this proceeding.” Furthermore, “[he] has not seen [Andre] since approximately 2010 and has not had any communication with [him] in” nearly four years. Thus, the trial court ordered YCHSA to file a petition to terminate respondents’ parental rights.

On 20 November 2019, YCHSA petitioned to terminate respondents' parental rights based upon neglect, failure to pay a reasonable portion of the minor children's care in the six months preceding the filing of the petition, failure to correct the conditions which led to the children's removal, and abandonment. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1), (2), (3), and (7) (2022).

Additional permanency planning hearings were conducted on 18 June 2020 and 5 November 2020. In its order entered 28 July 2020, the trial court found that, despite visitation being available, respondents failed to visit the children at any point. Accordingly, as requested by YCHSA, the trial court prohibited further visitation "with any biological parent" finding continued visitation would be "contrary to the children's health, safety, wellbeing and best interests."

Termination hearings were held on 20 May 2021, 16 August 2021, and 1 November 2021. In an order rendered 8 June 2022, the trial court adjudicated the existence of grounds to terminate respondents' parental rights on the basis of neglect, willfully leaving the children in placement outside the home for more than 12 months without making reasonable progress, and willful abandonment. *See* N.C. Gen. Stat. §§ 7B-1111(a)(1)-(2), (7). The court further concluded it was in the children's best interests to terminate respondents' parental rights. Accordingly, the court terminated respondents' parental rights. Respondents timely appealed.

II. Discussion

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On appeal, Mr. R argues the trial court erred in concluding that grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(7) when the petition did not allege that ground with respect to him, and in concluding that grounds existed pursuant to N.C. Gen. Stat. §§ 7B-1111(a)(1) and 7B-1111(a)(2) when the trial court's findings were not supported by clear, cogent, and convincing evidence.

As for Mr. F, he contends the trial court violated his right to due process by terminating his parental rights when he did “not have a meaningful opportunity to participate in the case” and regain custody of Andre. Similarly, he argues the trial court's findings of fact supporting termination are not supported by clear, cogent, and convincing evidence. We address each respondent in turn.

A. Standard of Review

“We review a trial court's adjudication under N.C. [Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re J.T.C.*, 273 N.C. App. 66, 68, 847 S.E.2d 452, 455 (2020) (alteration in original) (citation and internal quotation marks omitted), *aff'd per curiam*, 376 N.C. 642, 853 S.E.2d 146 (Mem) (2021). “‘If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary.’” *In re Z.D.*, 258 N.C. App. 441, 443, 812 S.E.2d 668, 671 (2018) (citation omitted). “We review *de novo* whether a trial court's findings support its conclusions.” *Id.* (citation omitted).

B. Willful Abandonment

“A trial court may terminate parental rights on the basis of several grounds, and ‘[a] finding of any one of the . . . separately enumerated grounds is sufficient to support a termination.’ ” *In re J.M.W.*, 179 N.C. App. 788, 791, 635 S.E.2d 916, 918-19 (2006) (alteration in original) (citation omitted). Accordingly, because we determine that the trial court’s findings support the adjudication of willful abandonment, “we need not review the other grounds.” *In re D.H.H.*, 208 N.C. App. 549, 552, 703 S.E.2d 803, 805-806 (2010) (citation omitted).

Under N.C. Gen. Stat. § 7B-1111(a)(7), a trial court may terminate the parental rights of a parent who “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). In making this determination, “the trial court must make findings of fact that show that the parent had a purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child[.]” *In re A.J.P.*, 375 N.C. 516, 532, 849 S.E.2d 839, 852 (2020) (brackets and internal quotation marks omitted) (quoting *In re N.D.A.*, 373 N.C. 71, 79, 833 S.E.2d 768, 774 (2019)). “[Willful] . . . intent is an integral part of abandonment and this is a question of fact to be determined from the evidence.” *In re A.J.P.*, 375 N.C. at 532, 849 S.E.2d at 852 (citation omitted). “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

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abandons the child.” *In re B.E.V.B.*, 381 N.C. 48, 51, 871 S.E.2d 700, 703 (2022) (citation and internal quotation marks omitted). Here, the relevant six-month period preceding the filing of the termination petition is 20 May 2019 to 20 November 2019.

1. Mr. R

As an initial matter, Mr. R asserts the termination “petition was insufficient to give [him] notice that his rights could be terminated for abandonment[.]” therefore the trial court’s adjudication of this ground was error. We find this argument to be without merit. Although there is a clerical error, the petition states unambiguously: “N.C. Gen. Stat. § 7B-1111(a)(7) the respondent-fathers have willfully abandoned the juveniles for at least six consecutive months immediately preceding the filing of this Motion to Terminate Parental Rights[.]” The section continues to list the other two fathers, and regarding Mr. R, it states:

- ii. Within the six months immediately preceding the filing of this Motion to Terminate Parental Rights, Mr. B[] has not: (1) visited with the minor children; (2) sent the minor children any cards, gifts, letters, or other tokens of love and affection; (3) made any efforts to maintain or strengthen his relationship with the minor children; or (4) inquired about health, status, or welfare of the minor children.

Despite the trial court mentioning an unknown “Mr. B[][,]” the petition is referring to Mr. R and refers to him throughout its entirety. Thus, Mr. R was given sufficient notice that his parental rights were subject to termination on the basis of abandonment. *In re Hardesty*, 150 N.C. App. 380, 384, 563 S.E.2d 79, 82 (2002)

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(“While there is no requirement that the factual allegations be exhaustive or extensive, they must put a party on notice as to what acts, omissions or conditions are at issue.”). What’s more, during the pretrial hearing, YCHSA and the guardian ad litem emphasized that “[N.C. Gen. Stat § 7B-1111(a)(7)] is alleged only with regard to the fathers[,]” and not Ms. B. Thus, Mr. R’s assertion is overruled.

In support of its adjudication that Mr. R willfully abandoned his children, the trial court made the following findings of fact, in pertinent part:

29. [Mr. R] has not seen his children since before he was incarcerated in April of 2018. This despite visitation being available to him until June of 2020. He did send them cards and call them while he was incarcerated. He last called the children in December of 2018. He has went (sic) since 2017 without face to face interaction with the children and has went (sic) over two years without calling or communicating with the children whatsoever.
30. In the six months preceding the filing of the motion to terminate his parental rights, Court Ordered, in-person visitation with his children was available to [Mr. R]. He did not attend a single visit. In the six months preceding the filing of the motion to terminate his parental rights [Mr. R] did not call or otherwise communicate with the children. During the six months preceding the filing of the motion to terminate his parental rights, [Mr. R] sent no letters, gifts or tokens of affection to the children. [Mr. R] has withheld all love, affection and support from the minor children. [Mr. R] has willfully abandoned the minor children.

Additionally, the trial court found:

34. [Mr. R] was released from Prison in late November of

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2018. He moved immediately to Wilmington, NC where he stayed for approximately 9 months with visitation with his children available to him the entire time. He then move (sic) to Springfield Massachusetts where he has remained ever since, having never participated in a single visit. [Mr. R] testified he had not seen the children since the year 2017.

These unchallenged findings of fact “are deemed supported by competent evidence and are binding on appeal.” *In re B.E.V.B.*, 381 N.C. at 50, 871 S.E.2d at 703 (citation and internal quotation marks omitted). Here, Mr. R illustrated a willful intent “to forego all parental duties and relinquish all parental claims to” his children. *In re A.J.P.*, 375 N.C. at 532, 849 S.E.2d at 852 (citation and internal quotation marks omitted). Although we acknowledge the strenuous economic circumstances Mr. R experienced, even assuming without deciding that the poverty he experienced while residing in Wilmington would affect the willfulness analysis, Mr. R made no attempt to provide his children with “love, care,” or “the opportunity to display filial affection” over the course of multiple years, particularly after his living and financial situation stabilized in Massachusetts. *In re B.E.V.B.*, 381 N.C. at 51, 871 S.E.2d at 703 (citation and internal quotation marks omitted). Accordingly, the trial court did not err in adjudicating that grounds existed to terminate his parental rights on the ground of abandonment. Additionally, as Mr. R does not challenge the trial court’s best interests determinations, we do not address it here.

2. Mr. F

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Mr. F argues, preliminarily, that his “due process rights were not adequately protected because he did not have a realistic opportunity to obtain custody of Andre after review.” Specifically, Mr. F contends the lack of notice that YCHSA had obtained custody of Andre and the fact that his request to see Andre was prohibited, precluded him from an affordable opportunity “to regain custody.” We disagree.

This Court conducts a balancing test of the State’s interest in a child’s welfare, “as well as the [child]’s right to be protected by the State from abuse or neglect[.]” “[t]o determine whether the lack of notice unreasonably deprived respondent” of due process and the “right to custody of his child[.]” *In re Poole*, 151 N.C. App. 472, 477, 568 S.E.2d 200, 203 (2002) (Timmons-Goodson, J., dissenting) (citation omitted), *rev’d per curiam as stated for reasons in the dissent*, 357 N.C. 151, 579 S.E.2d 248 (Mem) (2003).

Here, Mr. F’s due process rights were adequately protected. Indeed, Mr. F was incarcerated in Massachusetts from 2014 until 2019 and did not learn of Andre’s placement in YCHSA custody until the summer of 2019. However, any lack of notice regarding Andre’s placement in YCHSA custody was a result of his own failure to maintain consistent contact with Ms. B and to be informed of Andre’s wellbeing. In fact, Mr. F acknowledged that Ms. B did not know his location and most likely had “conflicting ideas of which state [he] was in.” Moreover, the fact that Mr. F was unaware Andre lived in North Carolina until he learned of the pending case from an *unrelated* party emphasizes the lack of concern for Andre’s health and safety. Aside

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from his receipt of the official service and summons on 1 August 2019, Mr. F learned of the case in July 2019 and termination hearings were conducted in 2021. Therefore, Mr. F had an adequate opportunity to attempt to regain custody of Andre “after appropriate review by the court[.]” *In re Poole*, 151 N.C. App. at 478, 568 S.E.2d at 204 (Timmons-Goodson, J., dissenting) (citation omitted).

“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 M.A.W.*, 370 N.C. 149, 153, 804 S.E.2d 513, 517 (2017) (citations and brackets omitted). Even though “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 C.B.C.*, 373 N.C. 16, 19-20, 832 S.E.2d 692, 695 (2019) (emphasis in original) (citation omitted). Consequently, “ ‘our decisions concerning the termination of the parental rights of incarcerated persons require that courts recognize the limitations for showing love, affection, and parental concerns under which such individuals labor while simultaneously requiring them to do what they can to exhibit the required level of concern for their children.’ ” *In re A.J.P.*, 375 N.C. at 532, 849 S.E.2d at 852 (citation omitted). Accordingly, we preclude Mr. F from using his incarceration as a shield for avoiding his parental responsibilities.

Mr. F also challenges several portions of the trial court’s findings, arguing he “was completely barred” from visiting Andre despite his requests to do so and

“excluded from any chance of reunification.” We disagree.

Regarding Mr. F’s abandonment of Andre, the trial court found, in relevant part:

45. ... [Mr. F’s] whereabouts were unknown to the YCHSA at the time the petition was filed. At the inception of the case, concerns regarding [Mr. F] included his unknown whereabouts, complete absence from the child’s life and the uncertainty surrounding his circumstances. In July of 2019 [Mr. F] called the YCHSA to indicate he had been released from an out of state prison and to provide an address in Vermont. At this point, his incarceration was a concern as well. In August of 2019 the YCHSA discussed a potential OHFSA with [Mr. F] but he never entered into the case plan with [YCHSA]. On September 11, 2019 he reported that he was living in the home of a friend and working at a Wendy’s restaurant. He did request information regarding things he could do in his area that would be akin to an OHFSA. The YCHSA then provided [Mr. F] information regarding parenting classes, substance abuse assessment and treatment and psychological assessment and treatment. However, [Mr. F] failed to maintain communication with the YCHSA and failed to report any progress in these areas to the YCHSA.
46. [Mr. F] has not seen [Andre] since 2010. He has not had any contact with him whatsoever in over four years. In the six months preceding the filing of the motion to terminate his parental rights, Court Ordered, in-person visitation with his child was available to [Mr. F]. During that same six months, he participated in no visitation whatsoever with [Andre]. During that same six month period he did not call or otherwise attempt to contact [Andre]. During that six month period he sent no gifts (sic) letters or tokens of affection to [Andre]. [Mr. F] has withheld all love, affection and care from [Andre]. He has willfully

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abandoned [Andre].

47. The Court would note that [Mr. F] had effectively abandoned the child well before the petition in the underlying juvenile matter was even filed.
48. [Mr. F] testified on his own behalf at the adjudication phase. He testified he was released from the Massachusetts Department of Corrections on June 28, 2019. He found out upon his release from incarceration that the child was in the care of [YCHSA]. He indicated that he had served five years in prison He indicated that he had appeared at a Court date for the underlying juvenile matter immediately following his release but that the matter was continued. He indicated that he requested visits, by and through counsel at the following hearing but that the request was denied. The Court would note that the following hearing would have occurred on September 12, 2019 and that while the Court's Order from that day does make adoption the primary plan, it does not eliminate visitation opportunities for any of the respondents.

Indeed, testimony from the termination hearings indicate that YCHSA and the guardian ad litem objected to Mr. F's request to visit Andre in September 2019, but only because Andre did not know him as his biological father. Nevertheless, court-ordered biweekly visitation was available until June 2020 when the trial court ceased visitation as being detrimental to the children's wellbeing. In fact, in a letter dated 24 February 2020, Andre's counselor recommended the opportunity for visitation cease as Andre "was devastated" to learn that Mr. R was not his biological father and as a result Andre exhibited "high levels of anxiety" and "his therapy increased to two times per week." She also noted "how upset [Andre] was when he was given the

picture of his biological father.” Furthermore, we must acknowledge Andre’s letter to the trial court, “penned in his own hand, stating that he does not feel threatened when he is with his foster family and requesting that a termination of parental rights be done as soon as possible.”

Lastly, Mr. F does not contest the finding that he had no contact “with [Andre] whatsoever in over four years” and had not seen Andre since 2010. While the relevant statutory period is the six months preceding the filing of the petition to terminate parental rights, “the trial court may consider a parent’s conduct outside the six-month window in evaluating a parent’s credibility and intentions[.]” *In re D.E.M.*, 257 N.C. App. 618, 619, 810 S.E.2d 375, 378 (2018) (citation and internal quotation marks omitted).

Thus, the trial court’s findings evidence a clear intent by Mr. F to “forego all parental duties and relinquish all parental claims” to Andre. *In re A.J.P.*, 375 N.C. at 532, S.E.2d at 852 (citations and internal quotation marks omitted). Even considering his incarceration until 28 June 2019, a portion of the six-month window, Mr. F had already established an intent to abandon Andre as he had no knowledge of his well-being or location. Accordingly, the trial court did not err in its conclusion that Mr. F willfully abandoned Andre. Likewise, Mr. F does not challenge the trial court’s best interest determination.

III. Conclusion

For the foregoing reasons, the trial court did not err when it adjudicated that

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the ground of willful abandonment existed to terminate respondents' parental rights.

Accordingly, we affirm the trial court's order.

AFFIRMED.

Judges TYSON and RIGGS concur.

Report per Rule 30(e).