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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-869

Filed 2 April 2024

Pitt County, No. 22 JT 105

IN THE MATTER OF: K.-G.L.S.

Appeal by respondent-father from order entered 20 June 2023 by Judge Mario E. Perez in Pitt County District Court. Heard in the Court of Appeals 21 March 2024.

*W. Gregory Duke for petitioner-appellee mother.*

*Christopher M. Watford for respondent-appellant father.*

STADING, Judge.

This case involves a private termination of parental rights proceeding initiated by petitioner (“mother”), mother of K.-G.L.S. (“Kristen”).<sup>1</sup> Respondent (“father”), Kristen’s father, appeals from the trial court’s order terminating his parental rights. Based on the reasons stated below, we affirm.

**I. Background**

Mother and father got married in 2012. Kristen was born in November 2013. Mother and father divorced on 9 September 2017. On 15 September 2017, a consent order was entered in which mother was granted legal and physical custody of Kristen,

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<sup>1</sup> A pseudonym is used to protect the minor child’s identity. See N.C. R. App. P. 42.

and father was granted visitation “as can be agreed upon between the parties.” The order was non-prejudicial and temporary as to both parties.

On 24 June 2022, mother petitioned to terminate father’s parental rights to Kristen. Mother alleged that father had a long history of substance abuse and an extensive criminal history. When he last visited Kristen in June 2018, he appeared to be under the influence of an illegal substance. His last communication with Kristen was by Facebook Messenger on 24 January 2021. Outside the January 2021 Facebook message, father had made no attempts to visit or communicate with Kristen, had not provided any financial support for Kristen, and had not sent Kristen any letters, cards, or presents since June 2018. As grounds for termination, mother alleged neglect and willful abandonment. N.C. Gen. Stat. § 7B-1111(a)(1) and (7) (2023). On 12 September 2022, father answered the petition, opposing termination of his parental rights.

The hearing on the termination petition was held on 16 May 2023. Before the presentation of evidence, mother stated that she was no longer alleging that grounds existed to terminate father’s parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) for neglect. The trial court entered an order on 20 June 2023 concluding that grounds existed to terminate father’s parental rights to Kristen under N.C. Gen. Stat. § 7B-1111(a)(7) for willful abandonment. The trial court also concluded that it was in Kristen’s best interests that father’s parental rights be terminated. Father appeals.

## **II. Analysis**

### **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 E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)). This Court limits its review of the findings of fact to “only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019). “A trial court’s finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding.” *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. “The trial court’s conclusions of law are reviewable de novo on appeal.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019).

“If [the trial court] determines that one or more grounds listed in section 7B-1111 are present, the court proceeds to the dispositional stage, at which the court must consider whether it is in the best interests of the juvenile to terminate parental rights.” *In re D.L.W.*, 368 N.C. 835, 842, 788 S.E.2d 162, 167 (2016) (citation omitted); N.C. Gen. Stat. § 7B-1110 (2023). We review the trial court’s dispositional findings

of fact to determine whether they are supported by competent evidence. *In re K.N.K.*, 374 N.C. 50, 57, 839 S.E.2d 735, 740 (2020). Unchallenged dispositional findings are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). A trial court's best interests determination "is reviewed solely for abuse of discretion." *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019) (citation omitted). "[A]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citation omitted).

**B. Adjudicatory Phase**

Father contends the trial court erred by concluding that grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(7). He contends the evidence did not support the findings that father willfully abandoned Kristen during the six months prior to the filing of the termination petition.

Parental rights are subject to termination 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) (2023). "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 Young*, 346 N.C. 244, 251, 485 S.E.2d 612, 617 (1997) (citation omitted). "[I]f a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wil[l]fully neglects to lend support and maintenance, such parent

relinquishes all parental claims and abandons the child.” *Pratt v. Bishop*, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962) (citation omitted). “Whether a biological parent has a willful intent to abandon his child is a question of fact to be determined from the evidence.” *In re Adoption of Searle*, 82 N.C. App. 273, 276, 346 S.E.2d 511, 514 (1986). While “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 D.M.O.*, 250 N.C. App. 570, 573, 794 S.E.2d 858, 861 (2016) (internal citations, quotation marks, and alterations omitted).

Here, the termination petition was filed on 24 June 2022, and the determinative six-month period runs from 24 December 2021 to 24 June 2022. The trial court made the following findings regarding father’s conduct during this relevant time period:

16. There were sporadic communications between [father] and [Kristen] between January of 2021 and March of 2021. However, between April of 2021 and the date of the filing of the petition, [father] did not visit with [Kristen], did not request to visit with [Kristen], did not attend any medical appointments with [Kristen], did not attend any of [Kristen’s] school-related events or activities, did not communicate, or attempt to communicate, with [Kristen], did not send [Kristen] any letters, did not send [Kristen] any cards or presents for Christmas, for Easter, or for [Kristen’s] birthday. [Father], during this time period, did not provide any financial support for [Kristen].

17. [Father] has been incarcerated for substantial periods of time since the birth of [Kristen]. However, [father] hasn’t

been continuously incarcerated and there have been significant periods of time when he was not incarcerated. [Father] wasn't incarcerated in 2021 and wasn't incarcerated again until April of 2022. During this time period, [father] did not visit with [Kristen], did not request to visit with [Kristen], did not attend any medical appointments with [Kristen], did not attend any of [Kristen's] school-related events or activities, did not communicate, or attempt to communicate, with [Kristen], did not send [Kristen] any letters, did not send [Kristen] any cards or presents for Christmas, for Easter, or for [Kristen's] birthday. [Father], during this time period, did not provide any financial support for [Kristen].

18. During [father's] incarceration in April 2022 until he was released in or around June 1, 2022, he did not communicate with [Kristen], did not attempt to communicate with [Kristen], did not send [Kristen] any letters or cards, and did not provide any financial support for [Kristen]. During this period of incarceration, [father] could have written letters to [Kristen], could have sent her cards, and could have attempted to telephone [Kristen]. [Father] did subpoena records from the Scott County, Tennessee Jail which indicated he made telephone calls to other people but not to [mother] or to [Kristen].

19. [Father], on June 1, 2022, sent a text message to [mother] in which he wrote "Hey how [Kristen] doing I miss her and tell I love her like to talk to her." This was the only such attempted communication with [Kristen] made by [father] in 2022 prior to the filing of the Petition herein.

20. For the six (6) consecutive months immediately preceding the filing of the petition in this case on June 24, 2022, [father], other than a single text message sent on June 1, 2022 . . . did not communicate with [Kristen] or attempt to communicate with [Kristen]. [Father], during the six (6) consecutive months immediately preceding the filing of the petition in this case, did not send [Kristen] any letters or cards and did not provide any financial support for [Kristen].

21. After [father] was served with the petition on July 9, 2022, he started attempting to communicate with [Kristen] and, in fact, sent multiple text messages to [mother] asking to speak with [Kristen]. [Father] also sent letters addressed to [Kristen] (he misspelled [Kristen's] name in one of the letters). [Father] didn't provide any financial support for [Kristen] during this time period.

22. The attempts to communicate with [Kristen] following service on him of the petition show that [father] could have made similar efforts to communicate with [Kristen] during the six (6) consecutive months immediately preceding the filing of the petition. [Mother] has had the same telephone number and the same address since she moved into her present residence in December of 2017.

23. The Court finds by clear, cogent, and convincing evidence that [father], for a period of at least six (6) consecutive months immediately preceding the filing of the Petition, has willfully abandoned [Kristen] pursuant to N.C. [Gen. Stat.] [§] 7B-1111(a)(7).

First, father challenges finding of fact 18 as not being supported by the evidence. Specifically, he argues he was incarcerated after 1 June 2022, there was no evidence presented regarding what he “could or could not do within prison[,]” and there was no support for the reference to father obtaining a subpoena for calls made while he was incarcerated. We acknowledge that while father testified he was arrested on 16 April 2022, there was no clear, cogent, or convincing evidence presented that he was released on or around 1 June 2022. Thus, we disregard the portion of finding of fact 18 stating that father was released in or around 1 June 2022. *See In re J.M.*, 373 N.C. 352, 358, 838 S.E.2d 173, 177 (2020) (disregarding factual

findings not supported by the record). Even so, the rest of finding of fact 18 is supported by the evidence.

Other than the single text message sent on 1 June 2022, mother testified that during the entire determinative six-month period, father did not contact Kristen or mother or send any financial support, clothing, gifts, or letters for Kristen. Unchallenged finding 21 established that only after the petition to terminate father's parental rights was served on father on 9 July 2022 did father contact mother. Father admitted that he "started calling" mother after his attorney advised him to "start writing and texting" and acknowledged that he retained his attorney only after he was served with the termination petition in jail. The trial court made the reasonable inference from father's testimony and unchallenged finding 21 that father could have written or attempted to call Kristen during the period of his incarceration that began in April 2022, but he did not do so. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) ("[I]t is [the trial] judge's duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom."). Moreover, father confirmed that his attorney had subpoenaed phone records for the time he was incarcerated in 2022. When cross-examined by mother's attorney about the absence of any recordings showing that father tried to contact mother or Kristen, father only referred to calls he had made to mother after being served with the termination petition, outside the six-month determinative period.



Father also argues finding of fact 22 is not supported by clear, cogent, and convincing evidence. He contends that comparing what he could do after being released from incarceration to what he could do while incarcerated is “not a fair comparison” to his situation during the six-month relevant window. We are not persuaded.

The trial court did not have to consider father’s abilities to maintain a relationship with Kristen after he was released from incarceration in 2022 in order to find that he could have made similar efforts to communicate with Kristen during the relevant six-month period, including the time he was incarcerated beginning in April 2022. As discussed above, other than the single text message sent on 1 June 2022 to mother, mother testified that during the entire determinative period, father did not contact Kristen or mother or send any financial support, clothing, gifts, or letters for Kristen. Unchallenged finding 17, which is binding on appeal, establishes that father was not incarcerated from 24 December 2021 to April 2022. Father contacted mother after the termination petition was served on him on 9 July 2022, during which time he testified he was still incarcerated. Therefore, the trial court could reasonably infer from father’s post-petition attempts at communicating with mother and Kristen made while incarcerated that he “could have made similar efforts” to contact Kristen during the entire determinative six-month period. Moreover, mother testified that since June 2018, she had resided at the same residence and had the same telephone number, email address, and Facebook

messenger contact information. Based on this evidence and unchallenged findings of fact, father's challenges to finding of fact 22 are overruled.

Next, father argues that the trial court erred in concluding that he willfully abandoned Kristen because it failed to "make the necessary inquiry into" how his mental health issues, incarceration, and lack of stability limited his ability to exercise his parental rights. Father analogizes his case to *In re D.M.O.*, 250 N.C. App. 570, 794 S.E.2d 858 (2016).

Father points to his own testimony that he lived with his aunt and uncle "for a while" in 2021, lived "place to place" in early 2022, did not have "a lot of income" from 2017 to 2022 but did have "stimulus checks come in" and would have to "ask for rides here and there" or "pay someone [for rides]" from 2017 to 2022. Father also directs this Court's attention to the following testimony:

[Mother's counsel:] And all these things that you've done since the petition was filed in this case why couldn't you have done some of those things before, sir?

[Father:] I was mentally unstable. You know, I mean, like I said, I mean, I've been diagnosed bipolar, PTSD, and hyper ADD. Like I said, and then with my addiction and stuff, I mean, I was (inaudible). You know, like I had plenty time of doing good, and then I started spiraling before I went to prison. I mean, like I said, the overdose and everything. I wasn't stable enough in my mind or financially. Like I said, I'm in Cherokee Health Mental Health treatment, like I said, Drug Court, state probation, halfway houses. I mean, I'm just better now than I was.

"We note that the trial court need not make a finding as to every fact which

arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.” *In re A.E.S.H.*, 380 N.C. 688, 693, 869 S.E.2d 676, 680 (2022) (quoting *Witherow v. Witherow*, 99 N.C. App. 61, 63, 392 S.E.2d 627, 629 (1990), *aff’d per curiam*, 328 N.C. 324, 401 S.E.2d 362 (1991)). Here, the trial court found the facts that were material to the resolution of this case. During the relevant six-month period, outside the single text message sent on 1 June 2022, father did not visit, contact, communicate, or attempt to communicate with Kristen and did not send any letters, presents, or money to her. Furthermore, father’s attempts at communicating with Kristen after the filing of the termination petition demonstrate that he could have made similar efforts during the determinative six-month period but failed to do so.

In *In re D.M.O.*, the trial court found that the respondent-mother had a history of substance abuse, was incarcerated for much of the determinative six-month period, failed to exercise visitation and attend her son’s sports games, and failed to contact her son during three of those months. *In re D.M.O.*, 250 N.C. App. at 577–78, 794 S.E.2d at 864. However, “there [were] material conflicts in the evidence relating to the issue of respondent-mother’s willfulness that were not resolved by the trial court’s order.” *Id.* at 579, 794 S.E.2d at 865. In addition, the trial court made no findings that the respondent-mother’s conduct was willful. *Id.* at 577–78, 794 S.E.2d at 864. The trial court “made no findings establishing whether respondent-mother had made any effort, had the capacity, or had the ability to acquire the capacity, to perform the

conduct underlying its conclusion” that she had willfully abandoned her son. *Id.*

The circumstances of this case are distinguishable from *In re D.M.O.* Unlike the respondent-mother in *In re D.M.O.*, father was not incarcerated for a significant portion of the six-month period. He was not incarcerated from 24 December 2021 until April 2022 and did not visit, contact, or send Kristen any letters, presents, or money during the entire six-month period, outside of a single text message sent on 1 June 2022. Furthermore, while the court in *In re D.M.O.* made no findings about the respondent-mother’s efforts or ability to contact her son, here, the trial court found that father was able to make efforts to communicate with Kristen during the relevant six-month period but failed to do so.

In conclusion, we hold that the trial court’s findings are supported by clear, cogent, and convincing evidence, and the trial court’s findings support its conclusion that father willfully abandoned Kristen for a period of at least six consecutive months immediately preceding the filing of the termination petition. Accordingly, we affirm the trial court’s adjudication under N.C. Gen. Stat. § 7B-1111(a)(7).

### **C. Dispositional Phase**

Next, father argues that the trial court abused its discretion in terminating his parental rights because it failed to consider and make findings about his bond with Kristen. We disagree.

In determining whether termination of parental rights is in the best interests of a juvenile:

The court may consider any evidence, including hearsay evidence as defined in [N.C.] [Gen. Stat. §] 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall 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 consideration.

N.C. Gen. Stat. § 7B-1110(a) (2023).

In the instant case, the trial court found as follows:

26. After consideration of those factors set out in N.C. [Gen. Stat.] [§] 7B-1110, the Court finds that [Kristen's] best interests would be promoted by terminating the parental rights of [father]. The report of the Guardian Ad Litem was introduced into evidence and the Court has taken into consideration this report. The Court finds the following additional facts in determining whether it is in the best interests of [Kristen] to terminate the parental rights of [father]:

- (a) [Kristen] is presently [nine] years old and is in the [second] [g]rade at Greenville Christian Academy, North Carolina. [Kristen] attends school regularly and has done well academically. [Kristen] enjoys basketball

and is well-adjusted socially.

- (b) [Mother] married [M.M.] on December 21, 2018 and [Kristen] has a close and loving relationship with [M.M.] and his extended family. [Kristen] regards her stepfather as her father and [M.M.] intends to adopt [Kristen] when [Kristen] is eligible to be adopted. [M.M.] has an extensive family network and [mother] and [M.M.] had twins on December 29, 2022. [Kristen] has a close and loving relationship with her siblings.
- (c) [Kristen] is well-taken care of by [mother] and resides in a comfortable and suitable home in Winterville, North Carolina. [Mother] is gainfully employed as a therapist and she and [M.M.] are fully able, and have been, providing for all of [Kristen's] needs. [Mother] has a strong support network to assist her with caring for [Kristen].

In *In re A.U.D.*, 373 N.C. 3, 10, 832 S.E.2d 698, 702 (2019), the respondent argued that the trial court failed to make sufficient findings regarding the factors set forth in N.C. Gen. Stat. § 7B-1110(a). The North Carolina Supreme Court held that while the trial court “must *consider* all the factors in [N.C. Gen. Stat. §] 7B-1110(a)[.] . . . [t]he statute does not . . . explicitly require written findings as to each factor.” *Id.* at 10, 832 S.E.2d at 702 (emphasis in original). The Supreme Court noted that the transcript of the hearing demonstrated the trial court carefully considered each of the statutory criteria listed in N.C. Gen. Stat. § 7B-1110(a). It held that where there was no conflict in the evidence regarding the likelihood of adoption and where it was undisputed that no bond existed between the father and the children, “a remand by this Court to the trial court for written findings on these uncontested issues . . . would

be an elevation of form over substance and would serve only to delay the final resolution of this matter for the children.” *Id.* at 11, 832 S.E.2d at 703.

Similar to the circumstances in *In re A.U.D.*, the trial court here specifically found in the termination order that it considered the factors set out in N.C. Gen. Stat. § 7B-1110(a). It also found that it considered the guardian ad litem report which was admitted into evidence at the termination hearing. *See* N.C. Gen. Stat. § 7B-901(a) (2023) (“The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile.”). In his report, the guardian ad litem stated that Kristen understood the nature of a termination hearing, that father might lose his parental rights, and that M.M. would then be able to adopt her. Kristen indicated that she wanted the “adoption to go through” and “did not have much to say about [father].” In addition, there was no conflict in the evidence about the bond between father and Kristen. During the dispositional portion of the hearing, mother testified that Kristen “hardly ever” talks about father, “not since [M.M.’s] really been in her life.” Mother and M.M. both testified that it was Kristen’s desire to be adopted by M.M. Based on the above, we are satisfied the trial court properly considered each of the statutory factors.

Since the trial court made sufficient dispositional findings regarding the required factors and performed a reasoned analysis of those factors, we therefore hold that it did not abuse its discretion in concluding that termination of father’s parental rights was in Kristen’s best interests. The trial court’s order terminating father’s

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*Opinion of the Court*

parental rights of Kristen is affirmed.

AFFIRMED.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).