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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-717

Filed 2 April 2024

Moore County, Nos. 22JT60, 61

IN THE MATTER OF: M.J.W., K.E.W.

Appeal by respondent-appellant from orders entered 2 May 2023 by Judge Regina M. Joe in District Court, Moore County. Heard in the Court of Appeals 6 March 2024.

Foyles Law Firm, PLLC, by Jody Stuart Foyles, for petitioner-appellee.

J. Thomas Diepenbrock for respondent-appellant.

No brief filed for guardian ad litem.

STROUD, Judge.

Respondent appeals from orders terminating his parental rights to his two minor children under North Carolina General Statute Section 7B-1111(a)(1) for neglect and North Carolina General Statute Section 7B-1111(a)(7) for willful abandonment. Because the trial court's findings of fact are supported by clear and convincing evidence and the findings support the trial court's conclusion of willful abandonment, we affirm.

I. Background

Respondent is the father of Kelly, born in October 2012 in Wake County, North Carolina, and Michael, born in September 2015 in Wake County, North Carolina.¹ Petitioner is the paternal grandmother of Kelly and Michael. Kelly first came into the care of Petitioner in August 2014 “by way of DSS placement.” Petitioner testified that Kelly was visiting her and her husband for the weekend, and as Petitioner was driving Kelly back to Raleigh, Father called and told Petitioner “to turn around. To not bring [Kelly] back to Raleigh because [Kelly’s mother²] had OD’d and there were law enforcement and DSS on scene[.]” Kelly remained in the care of Petitioner, who was ultimately granted guardianship over Kelly on 4 March 2017. Father was granted supervised visitation with Kelly.

Michael was put in the care of Petitioner in December 2018, and Petitioner was granted legal and physical custody over Michael in a disposition order dated 24 June 2019. At the time of the disposition order, Father was “medically incapacitated and failed to take legal measures to provide a safe, permanent home for the child.” Father was initially living in Petitioner’s home with Petitioner and the minor children, but Petitioner testified Father left the home around April 2019, after living in Petitioner’s home for about four-and-a-half months. Father was granted supervised visitation with Michael.

¹ Pseudonyms are used for the minor children.

² Kelly and Michael’s mother also had her parental rights terminated in these proceedings but did not appeal the trial court’s order. Thus, our discussion will focus on Father.

After Father left Petitioner's home in 2019, he would call the children, but Petitioner testified it was "sporadic" and would happen about "four, five times a month." Starting "sometime in 2021 until October of 2022[.]" Father "would call 2-3 times a month[.]" These calls stopped in October 2022 because "Petitioner refused to continue to have contact with [Father] and told him to go through his attorney due to . . . Father's cursing and yelling at her." Father attended "a basketball game of the child's between 2019-2021 and a Taekwondo practice and two horse shows between 201[9]-2020" but has not "attended any . . . school activities o[r] parent-teacher conferences[;]" "attended (nor inquired about) any of the . . . medical appointments since 2019[;]" "bought any birthday presents in the last 36 months . . . except on two occasions[;]" and Father "purchased a hover board and tablet for the minor child in 2021; however, he has not purchased anything for him [or her] since that time." Petitioner testified that Father had not visited the children in-person since 26 November 2021.

On 27 June 2022, Petitioner filed an action to terminate Father's parental rights for both Kelly and Michael. The termination hearing was held on 16 March 2023. Father was not present at this hearing and his attorney made a motion to continue which the trial court denied since "[Father] has failed to establish sufficient grounds for this matter to be continued." On 2 May 2023, the trial court entered two orders, one order terminating Father's parental rights as to Michael, and a separate order terminating Father's parental rights as to Kelly.

II. Willful Abandonment

Father contends the trial court

erred when it concluded that [Father] willfully abandoned his children. The trial court's order failed to include findings addressing [Father's] conduct during the relevant six-month period. The trial court's findings do not show willful or intentional conduct evincing a settled purpose to forego all parental duties and relinquish all claims.

We will first discuss Father's challenge to various findings of fact and then we will discuss the merits of Father's challenge to the trial court's conclusion he willfully abandoned Kelly and Michael. As we affirm the trial court's conclusion of willful abandonment under North Carolina General Statute Section 7B-1111(a)(7), we need not discuss Father's challenge to the trial court's conclusion of neglect under North Carolina General Statute Section 7B-1111(a)(1). *See In re E.Q.B.*, 290 N.C. App. 51, 55, 891 S.E.2d 473, 476 (2023) (“[A]n adjudication of any single ground for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order. Therefore, if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds.” (citations omitted)).

A. Standard of Review

“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 these findings, in turn, support the conclusions of law.” *In re M.J.S.M.*, 257 N.C. App.

633, 636, 810 S.E.2d 370, 372 (2018) (citation omitted). Further, “[i]f unchallenged on appeal, findings of fact are deemed supported by competent evidence and are binding upon this Court.” *Id.* (citation omitted). Challenged findings that are “supported by clear and convincing competent evidence are deemed conclusive, even where some evidence supports contrary findings.” *In re J.L.H.*, 224 N.C. App. 52, 54, 741 S.E.2d 333, 334 (2012) (citations and quotation marks omitted).

B. Challenged Findings of Fact

Father challenges many findings of fact in both orders regarding Kelly and Michael. Much of the language in the findings in each order is substantially similar, and we will note any differences when appropriate. Father specifically challenges findings 23, 25, 32, 42, 51, 52, 53, 54, 55, and 56 as to Kelly and findings 23, 24, 26, 34, 45, 46, 53, 54, 55, 56, 57, and 58 as to Michael.

Findings 23, 25, 32, 42, 51, 52, 53, 54, 55, and 56 in Kelly’s order state:

23. That . . . Father ha[s] abdicated [his] parental responsibility to the Petitioner and her spouse in 2014 regarding [Kelly].

. . . .

25. That at all times since March 4th, 2017 [Father] ha[s] known how to contact . . . Petitioner; however, [he] ha[s] failed to maintain any meaningful contact with the Respondents (sic); moreover, [Kelly] has been in the exclusive care of . . . Petitioner and [Father] ha[s] known how to contact . . . Petitioner and [Kelly].

. . . .

32. That more specifically, [Father] would visit only

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sporadically with [Kelly] and ha[s] not had any meaningful contact for months with [Kelly]. . . .

. . . .

42. That in 2019, . . . Father would call two to three times a month; however, at no time did . . . Father visit with [Kelly] throughout 2019 other than on one occasion.

. . . .

51. That [Father] ha[s] failed to seize any substantial and meaningful opportunity as a parent in any manner with [Kelly] since 2014.

52. That the relationship between [Father] and [Kelly] is non-existent.

53. That [Father] ha[s] willfully failed to provide the love and support that flows naturally and normally between a parent and child.

54. That [Father] ha[s] neglected [Kelly] as defined in N.C.G.S. 7B-101(15) and 7B-1111(1).

55. That [Father] ha[s] abandoned [Kelly] as defined in N.C.G.S. 7B-1111(1).

56. That [Father] ha[s] provided no love, care, emotional support, or a nurturing environment for [Kelly].

Findings 23, 24, 26, 34, 45, 46, 53, 54, 55, 56, 57, and 58 as to Michael state:

23. That . . . [F]ather ha[s] abdicated [his] parental responsibility to . . . Petitioner and her spouse.

24. That a prior Court has previously found that [Father] ha[s] acted inconsistent with [his] constitutionally protected status as [a] parent[] and [is] not fit to exercise custody of [Michael].

. . . .

26. That all times since December 2019, [Father] ha[s] known how to contact . . . Petitioner; however, ha[s] failed to maintain any meaningful contact with the Respondents (sic); moreover, [Michael] has been in the exclusive care of . . . Petitioner and [Father] ha[s] known how to contact . . . Petitioner and [Michael].

. . . .

34. That more specifically, [Father] would visit only sporadically with [Michael] and ha[s] not had any meaningful contact for months with [Michael]. . . .

. . . .

45. That in 2019, . . . Father would call two to three times a month; however, at no time did . . . Father visit with [Michael] throughout 2019 other than on one occasion.

46. That [Father] ha[s] known how to contact . . . Petitioner but ha[s] failed to maintain any meaningful contact. . . . [F]ather would call 2-3 times a month from sometime in 2021 until October of 2022 when Petitioner refused to continue to have contact with him and told him to go through his attorney due to . . . Father's cursing and yelling at her.

. . . .

53. That [Father] ha[s] failed to seize any substantial and meaningful opportunity as a parent in any manner with [Michael].

54. That the relationship between [Father] and [Michael] is non-existent.

55. That [Father] ha[s] willfully failed to provide the love and support that flows naturally and normally between a parent and child.

56. That [Father] ha[s] neglected [Michael] as defined in N.C.G.S. § 7B-101(15) and 7B-1111(1).

57. That [Father] ha[s] abandoned [Michael] pursuant to N.C.G.S. 7B-1111(1).

58. That [Father] ha[s] provided no love, care, emotional support, or a nurturing environment for [Michael].

As to finding 24 regarding Michael, Father argues the finding is actually a conclusion of law. Father contends it is a conclusion of law since “it involves the application of legal principles to the facts.” However, finding 24 merely states that “*a prior court order has previously found* that [Father] ha[s] acted inconsistent with [his] constitutionally protected status as [a] parent[] and [is] not fit to exercise custody[.]” (Emphasis added.) As the trial court merely stated that a prior court order made this determination, and not that it was finding Father acted inconsistently with his constitutionally protected status, this is appropriately identified as a finding of fact and not a conclusion of law.

Father challenges findings 26, 33, 34, 46, and 53 as to Michael and findings 25, 31, 32, and 51 as to Kelly as unsupported since each finding has similar language that Father did not have “any meaningful contact” with Michael or Kelly since he “consistently called to speak with the minor children” and he “attended a two-day horse show, and horse-riding practice, a Tae Kwon Do practice, and a basketball game, all with Kelly” and bought tablets for Michael and Kelly and attended a family therapy session with Kelly and a medical appointment with Michael. While Father may disagree with the trial court’s characterization of his contact as not “meaningful,” the findings are supported by “clear, cogent and convincing evidence”

since Father's overall contact with the children was sporadic and inconsistent. *In re M.J.S.M.*, 257 N.C. App. at 636, 810 S.E.2d at 372. First, Father's phone calls with the children were minimal, as he called only 4-5 times per month from 2019-2021 and then 2-3 times per month after that. Father was not limited to having only 4-5 phone calls per month, and the rest of Father's actions support the trial court's findings. Father points to sporadic visitation with the children, such as a single horse show or basketball game, as evidence he had meaningful contact with them. However, these sporadic visits happened over a period of years, and happened less often as time went on. The trial court's other unchallenged findings show Father did not send any gifts for the past 36 months "except for two occasions," did not attend any "school activities o[r] parent-teacher conferences," did not attend or inquire about medical appointments since 2019, and other than a hover board and tablet purchased for the children in 2021, did not purchase anything for the children since that time. Finally, Petitioner testified Father did not visit with the children at all since November 2021. While Father may disagree with the trial court's characterization of having no *meaningful* contact with Michael or Kelly, this finding is supported by "clear, cogent and convincing evidence." *Id.*

While findings 54, 55, and 58 regarding Michael and findings 52, 53, and 56 regarding Kelly challenge different language than the above challenge to the trial court's characterization of "no meaningful contact[.]" the findings essentially are challenged on the same basis. Findings 54 and 52 characterize the relationship

between Father and the children as “non-existent[;]” findings 55 and 53 state Father “willfully failed to provide love and support” to the children; and findings 58 and 56 similarly state Father has not provided “love, care, emotional support or a nurturing environment” to the children. Again, Father may disagree with the trial court’s characterization of the parent-child relationship, but these findings are supported by “clear, cogent and convincing evidence” for the same reasons as findings 26, 33, 34, 46, and 53 as to Michael and findings 25, 31, 32, and 51 as to Kelly discussed above. *Id.*

As to finding 45 regarding Michael and 42 regarding Kelly, Father contends “the statement ‘[t]hat in 2019, . . . [F]ather call[ed] two to three times a month’” is “contrary to the evidence, since Petitioner testified . . . Father would call approximately four to five times a month until November 2021, and then two to three times a month from that point until October 2022.” To the extent finding 45 regarding Michael and 42 regarding Kelly state that Father called two to three times per month from 2019-2021, these findings are unsupported by the record. Petitioner testified Father initially called “four, five times a month.” Thus, the portion of finding 45 regarding Michael and 42 regarding Kelly that state Father called two to three times per month in 2019 is unsupported by “clear, cogent and convincing evidence.” *Id.*

As to finding 56 regarding Michael and 54 regarding Kelly, Father contends these are actually conclusions of law since the trial court determined in these

“findings” Father neglected the children. To the extent the determination of neglect is a conclusion of law, we need not address this challenge as we determine the trial court properly concluded Father willfully abandoned the children. *See In re E.Q.B.*, 290 N.C. App. at 55, 891 S.E.2d at 476 (“[A]n adjudication of any single ground for terminating a parent’s rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order. Therefore, if this Court upholds the trial court’s order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds.” (citations omitted)).

Father raises the same argument as to finding 57 regarding Michael and 55 regarding Kelly, and finding 23 in both orders, that the findings are actually conclusions of law. To the extent the trial court’s determination Father willfully abandoned Michael and Kelly and abdicated his parental responsibility is a conclusion of law, we will review it appropriately in our discussion of willful abandonment below. *See In re V.M.*, 273 N.C. App. 294, 298, 848 S.E.2d 530, 534 (2020) (“As a general rule, the labels findings of fact and conclusions of law employed by the lower tribunal in a written order do not determine the nature of our standard of review. Thus, if the lower tribunal labels as a finding of fact what is in substance a conclusion of law, we review that finding as a conclusion *de novo*.” (citations and quotation marks omitted)).

C. Conclusion of Willful Abandonment

Father argues the trial court erred in determining he willfully abandoned Kelly

and Michael since: (1) “[t]he trial court’s order failed to include adequate findings addressing [Father’s] conduct during the relevant six-month period[;]” and (2) “[t]he trial court’s findings do not show willful or intentional conduct by [Father] evincing a settled purpose to forgo all parental duties and relinquish all parental claims.”

Under North Carolina General Statute Section 7B-1111(a)(7), a parent’s parental rights can be terminated when “[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). To establish willful abandonment under North Carolina General Statute Section 7B-1111(a)(7), there must be

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. If a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.

In re K.N.K., 374 N.C. 50, 53, 839 S.E.2d 735, 738 (2020) (citations, quotation marks, and brackets omitted). As to the six-month period to determine abandonment, “the trial court may consider a parent’s conduct outside the six-month window in evaluating a parent’s credibility and intentions,” but “the determinative period . . . is the six consecutive months preceding the filing of the petition.” *In re B.C.B.*, 374 N.C. 32, 36, 839 S.E.2d 748, 752 (2020) (citations and quotation marks omitted).

Here, Father first contends the trial court did not identify the six-month

window in its orders, and therefore failed to “address . . . Father’s conduct during the relevant six-month period[.]” Both petitions regarding Kelly and Michael were filed on 27 June 2022. Thus, the determinative six-month period is from 27 December 2021 to 27 June 2022. *See id.* While the trial court did not specifically state the determinative period was 27 December 2021 through 27 June 2022, it still made sufficient findings that identify conduct, or the lack thereof, during this period. For example, findings 40, 41, 42, 43, and 44 regarding Michael and findings 37, 38, 39, 40, and 41 regarding Kelly all identify the lack of actions taken by Father for a period significantly longer than the six-month period. Where the trial court states that an action has not been taken ever, or has not been taken within “36 months” or since 2019, for example, this necessarily encompasses the six-month determinative window. Thus, we conclude the trial court made sufficient findings identifying the lack of Father’s involvement in Kelly and Michael’s life during the relevant six-month window.

Next, Father argues the trial court’s findings “do not show willful or intentional conduct by [Father] evincing a settled purpose to forgo all parental duties and relinquish all parental claims.” Father essentially claims his limited phone calls and sporadic visits with the children show he did not willfully abandon them. In *In re D.E.M.*, this Court held that the trial court erred in finding willfulness where the father was “incarcerated for a significant portion of the juvenile’s life, including the relevant six-month period preceding the filing of the petition, and he was still

incarcerated at the time of the termination hearing.” *In re D.E.M.*, 257 N.C. App. 618, 621, 810 S.E.2d 375, 379 (2018). Further, the child’s mother “refused to provide [the father] with contact information for herself or [the child].” *Id.* at 620-21, 810 S.E.2d at 378.

Here, Father had the contact information for Petitioner during the entire six-month determinative period. Despite this, Father has not visited the children since 26 November 2021, well before the six-month determinative period. Father contends he “does not have a driver’s license, which was part of the reason why on 26 November 2021, Petitioner drove to where [Father] resides to allow him to visit with the children.” However, this argument is unconvincing as Father did not file any action to modify guardianship and there is nothing in the record to suggest Father even attempted to contact Petitioner to arrange another visit after the final November 2021 visit. Father did not send any gifts since November 2021, and did not attend any school activities or medical appointments for either child since 2019. Even considering Father’s limited phone calls with the children, which became less frequent as time went on, this limited contact is not sufficient to forego a conclusion that he willfully abandoned the children. *See In re C.J.H.*, 240 N.C. App. 489, 504, 772 S.E.2d 82, 92 (2015) (affirming the trial court’s determination of willful abandonment where “during the relevant six-month period, respondent did not visit the juvenile, failed to pay child support in a timely and consistent manner, and failed to make a good faith effort to maintain or reestablish a relationship with the

juvenile”).

III. Conclusion

Since the trial court’s findings of fact are supported by clear and convincing evidence, and the findings support the trial court’s conclusion of willful abandonment, we affirm.

AFFIRMED.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).