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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-560

Filed 5 February 2025

Wilkes County, No. 23 JT 000127

IN THE MATTER OF: L.L.A., a minor juvenile.

Appeal by respondent-father from order entered 10 April 2024 by Judge Donna L. Shumate in Wilkes County District Court. Heard in the Court of Appeals 15 January 2025.

No brief filed for petitioner-appellee.

No brief filed for guardian ad litem.

Kimberly Connor Benton for respondent-appellant father.

ZACHARY, Judge.

Respondent-Father appeals from the trial court's order terminating his parental rights to his minor child, "Liam."¹ After careful review, we affirm.

I. Background

¹ For ease of reading and to protect the minor child's identity, we adopt the pseudonym to which the parties stipulated. We further note that Respondent-Mother "consented in open court to terminate and permanently relinquish her rights to" Liam, and she has not appealed from the trial court's order, which terminated her parental rights to Liam as well as Respondent-Father's. Consequently, she is not a party to this appeal.

Liam was born to Respondents in July 2020. Respondent-Father was arrested in October 2020, and Respondent-Mother shortly thereafter. In January 2021, the Wilkes County Department of Social Services placed Liam in the temporary physical and legal custody of Petitioner, his maternal aunt, a placement which the trial court memorialized in an interim order entered on 20 April 2021. Liam remained in Petitioner's custody pending Respondents' criminal trials on "numerous charges, including first-degree murder." Respondents were both subsequently convicted, with Respondent-Father receiving a sentence of life without the possibility of parole.

On 25 October 2023, Petitioner filed a private petition to terminate Respondents' parental rights to Liam. Petitioner alleged that Respondents "intentionally and willfully abandoned" Liam.² Neither parent filed a written response to the termination petition. On 3 January 2024, the trial court appointed a guardian ad litem to represent Liam.

The termination petition came on for an adjudication and disposition hearing in Wilkes County District Court on 14 February 2024. The court heard the testimony of Petitioner, Respondent-Mother (who did not contest the termination of her

² Petitioner specifically referenced N.C. Gen. Stat. § 7B-1111(a)(5)—the termination ground relating to the paternity of children born out of wedlock—in the termination petition, rather than § 7B-1111(a)(7), the termination ground for willful abandonment. In cases where a termination petition "alleges the existence of a particular statutory ground" but the trial court "finds the existence of a ground not cited in the petition, termination of parental rights on that ground may not stand unless the petition alleges facts to place the parent on notice that parental rights could be terminated on that ground." *In re T.J.F.*, 230 N.C. App. 531, 532, 750 S.E.2d 568, 569 (2013). Respondent-Father does not argue that he received inadequate notice based upon the allegations of the petition, and it is clear from the transcript that the parties were neither misled nor confused by the error.

parental rights), and Respondent-Father.

On 10 April 2024, the trial court entered an order terminating Respondents' parental rights. The court concluded that Respondents willfully abandoned Liam, *see* N.C. Gen. Stat. § 7B-1111(a)(7) (2023), and that termination of Respondents' parental rights was in Liam's best interests. The next day, Respondent-Father filed notice of appeal.

II. Discussion

Respondent-Father raises arguments concerning both the adjudication and disposition portions of the termination order. As to the adjudication, he challenges several of the trial court's findings of fact as unsupported by competent evidence and contends that the court erred in that "there was insufficient evidence to support the conclusion he abandoned Liam since he made efforts to maintain a relationship with his son given the restrictions placed upon him by his incarceration." Regarding the disposition, Respondent-Father again challenges several of the trial court's findings of fact and asserts that the court abused its discretion because termination of his parental rights was not in Liam's best interests.

Finally, Respondent-Father also claims that he "was denied his statutory right to effective counsel" at the hearing below. For the reasons that follow, we disagree. Accordingly, we affirm the termination order.

A. Termination of Parental Rights

"According to well-established North Carolina law, a termination of parental

rights proceeding involves the use of a two-step process consisting of an adjudicatory hearing and a dispositional hearing.” *In re D.T.H.*, 378 N.C. 576, 579, 862 S.E.2d 651, 654 (2021); *see also* N.C. Gen. Stat. §§ 7B-1109, -1110. “At the adjudicatory stage, the petitioner bears the burden of proving by clear, cogent, and convincing evidence the existence of one or more grounds for termination under subsection 7B-1111(a).” *In re L.M.M.*, 375 N.C. 346, 348, 847 S.E.2d 770, 773 (2020); *see also* N.C. Gen. Stat. § 7B-1109(e), (f).

Our appellate courts review a trial court’s adjudication of the existence of one or more of § 7B-1111(a)’s grounds for termination to discern “whether the findings are supported by clear, cogent[,] and convincing evidence and the findings support the conclusions of law, with unchallenged findings of fact made at the adjudicatory stage being binding on appeal, and with the trial court’s conclusions of law being subject to de novo review on appeal.” *D.T.H.*, 378 N.C. at 580, 862 S.E.2d at 655 (cleaned up).

“The trial court’s dispositional findings are binding on appeal if supported by the evidence received during the termination hearing or not specifically challenged on appeal.” *In re J.A.J.*, 381 N.C. 761, 777, 874 S.E.2d 563, 575 (2022) (citation omitted). “The trial court’s ultimate determination regarding the child’s best interests is reviewed for abuse of discretion and will be reversed only if it is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (cleaned up).

1. Adjudication

A trial court may terminate parental rights upon an adjudication that “[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). “Abandonment implies conduct on the part of the parent which manifests a willful determination to [forgo] all parental duties and relinquish all parental claims to the child.” *In re B.R.L.*, 379 N.C. 15, 18, 863 S.E.2d 763, 767 (2021) (citation omitted). “To find that a parent has willfully abandoned his or her child, the trial court must find evidence that the parent deliberately eschewed his or her parental responsibilities in their entirety.” *Id.* (cleaned up). “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.” *Id.* (cleaned up).

“In the context of abandonment, willfulness is more than an intention to do a thing; there must also be purpose and deliberation.” *In re D.M.O.*, 250 N.C. App. 570, 572–73, 794 S.E.2d 858, 861 (2016) (cleaned up). “Because [willful] intent is an integral part of abandonment and is a question of fact to be determined from the evidence, a trial court must make adequate evidentiary findings to support its ultimate finding of willful intent.” *Id.* at 573, 794 S.E.2d at 861 (cleaned up).

In the present case, the trial court made the following findings of fact pertinent

to the issue of Respondent-Father's willful intent to abandon Liam:

2. . . . Respondent-[F]ather was a citizen and resident of Wilkes County, North Carolina for at least six months next preceding the commencement of this action and is neither a minor nor incompetent. . . . Respondent-[F]ather was incarcerated pending trial in criminal matters at the time of the commencement of the action and was held in various parts of North Carolina. . . . Respondent-[F]ather, at the time of the hearing, was incarcerated in Central Prison

. . . .

12. That pursuant to the request of counsel for . . . Petitioner, the [c]ourt has taken judicial notice of the Orders and filings within Wilkes County file number 21 CvD 315, which is the underlying custody action related to [Liam] and the parties.

13. [Liam] has been in the care and custody of . . . Petitioner since January 20, 2021, when the Wilkes County Department of Social Services (DSS) placed him with . . . [P]etitioner as a kinship placement due to both Respondent-[F]ather and Respondent-[M]other being incarcerated in the Wilkes County Jail on the basis of multiple murder charges. The placement was converted into an interim custody order on April 20, 2021 in Wilkes County District Court (21 CvD 315), and has remained in effect since that date.

14. At all times since [Liam] was placed in the custody of . . . [P]etitioner, [Respondents] have known the street address of [Liam] and the telephone number of the residence of [Liam]. Both parties have actively used this information for their own purposes prior to and subsequent to the filing of the petition.

15. . . . Respondent-[F]ather was incarcerated on October 18, 2020, when he was charged with multiple counts of first-degree murder. . . . Respondent-[M]other facilitated visits between . . . Respondent-[F]ather and [Liam] in-

person or via the web until . . . Respondent-[M]other was incarcerated and charged as a co-defendant. . . . Respondent-[F]ather last saw [Liam] in December, 2020, when [Liam] was around 5 months old.

16. . . . Respondent-[F]ather was given the opportunity to participate in the temporary custody hearing on March 30, 2021, regarding [Liam]. He chose not to appear even though he was properly served and was given the opportunity to participate via Webex while he was incarcerated in Alleghany County. No reason was given by him as to his decision not to appear at the hearing.

17. . . . Respondent-[F]ather mailed two (2) drawings to [Liam] at . . . Petitioner's address after [Liam] came into her care and before the arrest of . . . Respondent-[M]other in January 2021. Other than those two mailings, . . . Respondent-[F]ather has not mailed any other notes, letters, cards, or gifts to [Liam] prior to the commencement of this action on October 25, 2023. He did not attempt to talk to [Liam] on the telephone, by e-mail, or other electronic means during the same timeframe. . . . Respondent-[F]ather was able to correctly recite the mailing address of . . . Petitioner in open court during the hearing.

18. . . . Respondent-[F]ather sent numerous letters to . . . Petitioner in 2021, but those letters were love letters to . . . Respondent-[M]other and did not mention [Liam]. . . . Respondent-[F]ather sent those letters to . . . Petitioner so that she could read them to . . . Respondent-[M]other via telephone after they were received. These letters were later turned over to the Wilkes County District Attorney's Office prior to . . . Respondents' criminal trials in Wilkes County Superior Court. . . . Respondent-[M]other confirmed that . . . Petitioner read letters to her that . . . Petitioner had received from . . . Respondent-[F]ather.

19. Respondent-[F]ather was convicted of two counts of first-degree murder and was sentenced to Life Without Parole.

Consequently, the trial court concluded “upon clear, cogent, and convincing evidence that” Respondent-Father “willfully abandoned [Liam] for at least six (6) months immediately preceding the date of the filing of this Petition in that [he has] willfully failed to have any contact with [Liam] within the meaning of [N.C. Gen. Stat. §] 7B-1111(a)(7).”

Respondent-Father argues that the court erred in its adjudication because “there was insufficient evidence to support the conclusion he abandoned Liam since he made efforts to maintain a relationship with his son given the restrictions placed upon him by his incarceration.” To support this argument, he challenges the evidentiary basis for several of the court’s findings of fact, including whether the trial court appropriately took judicial notice of the interim custody order and whether his two murder convictions were both in the first degree. “However, the[se] challenged findings are not necessary to support the trial court’s conclusion that” Respondent-Father willfully abandoned Liam, “and they need not be reviewed on appeal.” *In re C.J.*, 373 N.C. 260, 262, 837 S.E.2d 859, 860 (2020).

Respondent-Father also argues that the trial court erred by finding that he mailed two drawings to Liam before Respondent-Mother’s arrest in January 2021, when Respondent-Father testified at the hearing that he sent those drawings between April and September 2023. After careful and thorough review of the transcript, we agree that this limited portion of finding of fact #17 is unsupported by the evidence at the hearing. Respondent-Father consistently testified that he mailed

two lion drawings to Liam during the period between April and September 2023. Petitioner, however, provided contradictory testimony, in that she stated that Respondent-Father never sent Liam anything to her address at any point following his arrest. But, even with this conflicting testimony, there is no evidence in the record to suggest that Respondent-Father sent drawings to Liam before Respondent-Mother's arrest in January 2021. Consequently, our standard of review requires that we disregard this limited portion of finding of fact #17. *See In re A.J.L.H.*, 384 N.C. 45, 48, 884 S.E.2d 687, 690 (“[I]f the reviewing court determines that there are findings unsupported by the record, the reviewing court simply disregards those findings and examines whether the remaining findings support the trial court’s determination.”), *reh’g denied*, 384 N.C. 670, ___ S.E.2d ___ (2023).

The remaining findings of fact are sufficient to support the trial court’s conclusion that Respondent-Father willfully abandoned Liam, despite Respondent-Father’s argument that “he made efforts to maintain a relationship with his son given the restrictions placed upon him by his incarceration.” “Incarceration, standing alone, neither precludes nor requires a finding of willfulness on the issue of abandonment, and despite incarceration, a parent failing to have any contact can be found to have willfully abandoned the child.” *D.M.O.*, 250 N.C. App. at 575, 794 S.E.2d at 862 (cleaned up). “However, the circumstances attendant to a parent’s incarceration are relevant when determining whether a parent willfully abandoned his or her child, and this Court has repeatedly acknowledged that the opportunities of an incarcerated

parent to show affection for and associate with a child are limited.” *Id.* at 575, 794 S.E.2d at 862–63. “In determining willfulness in this context, it is significant that the tasks assigned were within a parent’s ability to achieve, and did not require financial or social resources beyond a parent’s means.” *Id.* at 576, 794 S.E.2d at 863 (cleaned up).

Here, the trial court made findings regarding Respondent-Father’s ability and failure to contact Liam, including that he “did not attempt to talk to the child on the telephone, by e-mail, or other electronic means” during the period of time between Liam’s placement with Petitioner and the filing of the termination petition, even though Respondent-Father knew Liam’s residence, street address, and telephone number and “was able to correctly recite the mailing address of . . . Petitioner in open court during the hearing.” Significantly, Respondent-Father does not challenge the court’s findings that he “actively used this information for [his] own purposes prior to and subsequent to the filing of the petition,” or that he “sent numerous letters to . . . Petitioner in 2021, but those letters were love letters to . . . Respondent-[M]other and did not mention” Liam. Respondent-Father’s self-serving use of this information evinces a willful disregard for Liam’s care within the meaning of N.C. Gen. Stat. § 7B-1111(a)(7).

It is clear from the transcript of the termination hearing that the trial court was thoughtful in its determination in this matter. Moreover, contrary to Respondent-Father’s assertions otherwise, it is clear that Respondent-Father’s

parental rights were not “terminated merely because he [wa]s incarcerated.” Those findings of fact that are supported by clear, cogent, and convincing evidence in turn support the court’s conclusion of law that Respondent-Father willfully abandoned Liam, which supports the adjudication of this ground for termination. We thus proceed to Respondent-Father’s argument concerning the disposition phase.

2. Disposition

Respondent-Father next argues that “[t]he court abused its discretion when it terminated [his] parental rights to Liam.” In the disposition portion of the termination order, the trial court made the following pertinent findings of fact:

3. [Liam] is placed in the sole custody of . . . Petitioner and has been in her sole custody since January 20, 2021. He is thriving at her home and in her care.
4. . . . Petitioner wishes to adopt [Liam].
5. [Liam] is very bonded to . . . Petitioner and views her as his mother and sole parent. He calls her “Mommy.”
6. The home of . . . Petitioner is the only home he has any memory of.
7. [Liam] has not seen . . . Respondent-[F]ather since prior to . . . Respondent-[M]other’s incarceration in January, 2021, when [Liam] was five months old. It is unlikely that [Liam] has any memories of . . . Respondent-[F]ather.
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9. There is a high likelihood that [Liam] will be adopted by . . . Petitioner.

10. There exists a strong and loving bond between [Liam] and . . . Petitioner.

11. Termination of parental rights will aid in the accomplishment of the adoption process.

Respondent-Father specifically challenges dispositional findings #3, 5–6, and 10 as unsupported by the evidence in the record. Consequently, the unchallenged dispositional findings—which include findings that Petitioner is willing and highly likely to adopt Liam—are thus binding on appeal. *See J.A.J.*, 381 N.C. at 777, 874 S.E.2d at 575.

As for the challenged findings, Respondent-Father acknowledges that Petitioner testified that Liam has lived with her since Respondent-Mother’s arrest in January 2021, which supports the gravamen of challenged finding #3. Respondent-Father also admits that Petitioner testified that Liam identifies her “as a parent.” We further note that Respondent-Father correctly argues that there is no evidence of record to support that Liam calls Petitioner “Mommy.”

Essentially, the thrust of Respondent-Father’s argument concerning these findings of fact revolves around a citation to a case in which our Supreme Court reasoned that the inclusion of a single erroneous and inappropriate dispositional finding was “prejudicial because of the possibility that it influenced the trial court’s ultimate best[.]interests determination.” *In re R.D.*, 376 N.C. 244, 264, 852 S.E.2d 117, 132 (2020). However, the evidentiary issues that Respondent-Father raises in this case are simply incomparable to the prejudicial error committed by the trial court

in *R.D.* In this case, Respondent-Father is unable to show that “[t]he trial court’s ultimate determination regarding [Liam]’s best interests . . . is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *J.A.J.*, 381 N.C. at 777, 874 S.E.2d at 575 (cleaned up). Therefore, the trial court did not abuse its discretion.

B. Ineffective Assistance of Counsel

Lastly, Respondent-Father contends that he “was denied his statutory right to effective counsel as his attorney did not meet with [him], or his family, prior to” the termination hearing. Respondent-Father asserts that this “prevent[ed him] from having necessary evidence to refute the grounds for terminating his rights,” that “his counsel did not effectively cross-examine witnesses,” and that “his counsel did not move to continue this matter to allow him time to prepare for [the hearing] and obtain the necessary evidence.”

“To prevail on a claim of ineffective assistance of counsel, [the] respondent must show that [his] counsel’s performance was deficient and the deficiency was so serious as to deprive h[im] of a fair hearing.” *In re T.N.C.*, 375 N.C. 849, 854, 851 S.E.2d 29, 33 (2020) (citation omitted). “To make the latter showing, the respondent must prove that there is a reasonable probability that, but for counsel’s errors, there would have been a different result in the proceedings.” *Id.* (cleaned up).

Respondent-Father compares this case to *In re B.L.H.*, in which “the record reveal[ed] that [the r]espondent’s counsel did not have any actual contact whatsoever

with [the r]espondent.” 239 N.C. App. 52, 62, 767 S.E.2d 905, 912 (2015). However, our careful review of the record reveals that the comparison is inapt. In *B.L.H.*, the respondent’s counsel “did not present any evidence on [the r]espondent’s behalf at either phase of the hearing, failed to present a cogent argument at the adjudication phase, and declined to make any substantive argument during the disposition phase of the hearing.” *Id.* Here, the transcript reveals that Respondent-Father’s counsel zealously argued on his behalf throughout the proceedings and cross-examined Petitioner on relevant issues relating to Respondent-Father’s willfulness in this matter. Further, despite Respondent-Father’s claim that his counsel “failed to contact” him, the transcript reveals that Respondent-Father had, in fact, met with his counsel to prepare his testimony prior to the hearing. Respondent-Father was well prepared to testify in this matter, particularly regarding his focus on the six-month period critical to the analysis of willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7). Moreover, during direct examination, Respondent-Father’s counsel inquired whether Respondent-Father “ha[d] the sheet” of “handwritten notes” that they previously “went over” together. Respondent-Father immediately produced the document.

Our review of the record reflects that this case is a far cry from counsel’s deficient performance in *B.L.H.*, where “the only affirmative act undertaken by counsel even arguably constituting an attempt to communicate with [the r]espondent was to contact the federal prison to learn about the prison’s email system.” *Id.*

Respondent-Father fails to persuade us that his counsel's performance was deficient, or that any deficiency "was so serious as to deprive h[im] of a fair hearing." *T.N.C.*, 375 N.C. at 854, 851 S.E.2d at 33 (citation omitted). "In light of the insufficient establishment of a deficient performance by h[is] counsel to amount to ineffective assistance of counsel, consequently [Respondent-Father] cannot show any prejudice suffered by h[im] as to the result in the proceedings." *Id.* at 857, 851 S.E.2d at 34.

III. Conclusion

For the foregoing reasons, the trial court's order is affirmed.

AFFIRMED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).