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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-656

Filed 19 February 2025

Pitt County, No. 23 JT 76

IN THE MATTER OF: L.M.H.

Appeal by respondent from order entered 13 April 2024 by Judge Wendy S. Hazelton in Pitt County District Court. Heard in the Court of Appeals 15 January 2025.

*Reeves, DiVenere & Wright, by Attorney Anne C. Wright, for respondent-appellant father.*

*Scarlett Peaden, pro se, no brief filed for petitioner-appellee mother.*

STADING, Judge.

Terrell Harper (“Father”) appeals from the trial court’s order terminating his parental rights to L.M.H. (“Luna”).<sup>1</sup> On appeal, he argues that the trial court committed error by terminating his parental rights for willful abandonment based on his incarceration during the determinative six-month period, and the trial court failed to recognize, identify, or address the limitations imposed by that incarceration. Our

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<sup>1</sup> See N.C. R. App. P. 42(b) (pseudonyms are used to protect the identity of the minor child).

review shows that the trial court's findings are supported by clear, cogent, and convincing evidence. Moreover, its conclusions of law are supported by the findings of fact. We thus affirm the trial court's order.

### **I. Background**

Luna was born on 16 November 2016 to Scarlett Peaden ("Mother") and Father. Mother and Father were unmarried but shared a residence. They separated in August 2017 when Mother moved out. After the separation, Mother brought Luna to visit Father and her paternal grandmother intermittently, including when Mother was at work.

Mother moved for temporary custody of Luna on 30 July 2020. Father did not attend mediation in that matter, and a temporary custody order was entered after a hearing on 27 January 2021. Father arrived late and missed the hearing. The temporary custody order gave Mother sole custody of Luna. Father was granted supervised visitation at the Center for Family Violence Prevention ("the Center").

On 3 June 2021, Father completed the requested intake paperwork at the Center. Before the supervised visits could occur, Father was required to pay associated fees, but he did not do so. The Center attempted to call Father twice to no avail. On 7 September 2021, the Center also emailed Father, telling him that he needed to pay the associated fees. Father did not pay the fees before his incarceration in November 2021—where he remained until 22 May 2023.

On 10 May 2023—while Father was still incarcerated—Mother petitioned the trial court to terminate Father’s parental rights. Father was served in jail and filed a responsive pleading. After his release on 22 May 2023, Father requested that Mother allow an alternative form of visitation because the Center was no longer offering those services. When Mother declined to accommodate such visits, Father moved the trial court to hold Mother in contempt, claiming she violated the temporary custody order. In the same filing, he also moved for visitation.

On 12 January 2024, the trial court conducted the adjudicatory phase of the hearing. Mother’s petition asserted grounds for termination of Father’s parental rights based on his alleged failure to establish paternity and for his willful abandonment. *See* N.C. Gen. Stat. § 7B-1111(a)(5), (7) (2023). The trial court dismissed Mother’s claim regarding paternity but concluded that willful abandonment had been established. Following the disposition hearing, the trial court entered an order on 3 April 2024, concluding that termination of Father’s parental rights served Luna’s best interests. Father appeals that order.

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(2) (2023) and 7B-1001(a)(7) (2023).

## **III. Analysis**

The sole question before us is whether the trial court properly concluded that Father’s parental rights should be terminated under N.C. Gen. Stat. § 7B-1111(a)(7).

Father contends that his incarceration during the relevant six-month period foreclosed any meaningful efforts of contact or support, thereby precluding a finding of willful abandonment. We disagree and affirm.

### **A. Willful Abandonment**

At the adjudicatory stage, “if a trial court’s finding of fact is supported by clear, cogent, and convincing evidence, it will be deemed conclusive even if the record contains evidence that would support a contrary finding.” *In re S.R.*, 384 N.C. 516, 520, 886 S.E.2d 166, 171 (2023) (citation omitted). “Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal.” *In re J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 71 (2020) (citation and quotation marks omitted). The trial court’s conclusions of law are reviewed *de novo* to determine whether the findings of fact support them. *In re S.R.*, 384 N.C. at 520, 886 S.E.2d at 171.

The trial court terminated Father’s parental rights for willfully abandoning Luna under N.C. Gen. Stat. § 7B-1111(a)(7). “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[.]’” *In re Young*, 346 N.C. 244, 251, 485 S.E.2d 612, 617 (1997) (quoting N.C. Gen. Stat. § 7B-1111(a)(7)). “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 Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986) (internal quotation marks and citation omitted). The “determinative” six-

month period is the period immediately preceding the filing of the termination petition. *In re J.D.C.H.*, 375 N.C. 335, 338, 847 S.E.2d 868, 872 (2020). In undertaking this analysis, a trial court must concentrate on the six months directly preceding the filing of the termination petition, though it may look to conduct outside that window to assess the parent’s credibility and intentions. *In re D.E.M.*, 257 N.C. App. 618, 619, 810 S.E.2d 375, 378 (2018). While “incarceration, standing alone, neither precludes nor requires a finding of willfulness on the issue of abandonment,” a complete lack of contact or support may still form the basis of willful abandonment. *In re D.M.O.*, 250 N.C. App. 570, 575, 794 S.E.2d 858, 862 (2016).

Here, since the termination petition was filed on 10 May 2023, the six-month determinative period ran from 10 November 2022 to 10 May 2023. It is undisputed that Father was incarcerated throughout this determinative period. Father challenges the trial court’s finding of fact no. 37, whereby the trial court found “a pattern of willful abandonment of [Luna] by [Father] as he did not take steps within the six-month period to provide for or have contact with [Luna] or [Mother] prior to the Petition being filed [and] made no attempts to inquire about [Luna’s] well-being.” He also disputes conclusion of law no. 5 that:

[Father] has willfully abandoned [Luna] for at least six consecutive months immediately preceding the filing of the Petition. [Father] has not sent any gifts, letters, and/or financial payments to [Mother], or others on her behalf of [Luna], nor has his family on behalf of [Luna] for at least six consecutive months prior to the filing of the Petition, or after and prior to trial. While [Father] was incarcerated at

times, he was not in prison during all times from the entry of [the] Order until the filing of the Petition and has always had a means in which to contact [Mother] or in the alternative file a motion in [this] action.<sup>2</sup>

Father posits since he was incarcerated throughout the determinative period—10 November 2022 to 10 May 2023—it was effectively impossible to visit or support Luna. He also asserts that the custody order required text-based communication, a method unavailable to him in prison; that he lacked Mother’s mailing address or phone number; and that he was without means to contribute financially. Finally, Father faults the trial court by pointing to his earlier, albeit incomplete, effort to arrange supervised visits at the Center.

Father cites *In re Matherly* in support of his contention that he was hindered by confinement-created hurdles in the context of the temporary custody order. 149 N.C. App. 452, 455, 562 S.E.2d 15, 18 (2002) (internal citation and quotation omitted). Although that case contemplated willfulness, it did so in the context of a “minor parent’s age-related limitations.” *Id.* The court order at issue here directed communication by Father via text message with Mother on account of previous instances of domestic violence. But the order presumed a mechanism of telephone communication with Luna as it required “whenever the minor child is in the physical

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<sup>2</sup> Conclusion of law no. 5 is actually a mixed finding of fact and conclusion of law. *See In re K.J.D.*, 203 N.C. App. 653, 662–63, 692 S.E.2d 437, 444–45 (2010) (internal citations and quotations omitted) (Providing that “any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a conclusion of law. Any determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of fact.”).

custody of one of the parties, the other party shall be [ ] entitled to telephone the minor child” and the party exercising physical custody of the minor child “shall convey as soon as possible any and all telephone messages left for the minor child.”

Even accepting the validity of Father’s argument—that the order limited his ability to contact Mother or Luna since text-messaging was unavailable during his period of incarceration—the evidence presented at the hearing supported the trial court’s findings that Father “did not file an [a]nswer or any responsive pleadings” to Mother’s request for temporary custody, and “a pattern of willful abandonment of [Luna] by [Father] as he did not take steps within the six-month period to provide for or have contact with [Luna] . . . .” At the hearing, Father was asked “why, if you can file a notice to have a hearing and talk to a judge about visitation with [Luna] now . . . could you not have filed a motion before?” In response, Father conceded that he could have done so. Father managed to file and serve his motion for civil contempt and temporary custody, yet he did not make prior attempts to do the same within the six-month determinative period. The trial court’s findings are thus supported by clear, cogent, and convincing evidence. *See In re S.R.*, 384 N.C. at 520, 886 S.E.2d at 171.

This matter is similar to *In re E.H.P.*, 372 N.C. 388, 831 S.E.2d 49 (2019). In that case, the respondent made no attempt to alter the terms of a temporary custody order “so as to allow contact between him and the children,” and “the fact that [the] respondent was incarcerated for almost the entirety of the six-month period preceding the filing of the termination petition [did] not preclude a finding of willful

abandonment . . . .” *Id.* at 394, 831 S.E.2d at 53. Despite the respondent facing a more restrictive temporary custody order than Father here, the Court nonetheless concluded that the respondent’s conduct met the statutory standard for willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7) and affirmed the trial court’s adjudication. *Id.* at 394–95, 831 S.E.2d at 53. In conformity with that opinion, we hold that the trial court’s conclusion of willful abandonment is supported by findings based on clear, cogent, and convincing evidence. *Id.* at 392, 831 S.E.2d at 52.

Father also challenges the trial court’s findings to the extent that they address conduct outside of the six-month determinative period. For example, the trial court found that while Father initially paid an intake fee, he never satisfied other requirements to secure visitation through the Center. The trial court further found that although Father was incarcerated, he had opportunities—before and even during custody proceedings—to seek contact with Luna yet did not do so in any meaningful way. It added that Father maintained communication with his two other biological children before reporting to prison, yet he did not communicate with Luna. We acknowledge Father’s contention that these findings are relevant to the trial court’s conclusion in that “it may look to conduct outside that window to assess the parent’s credibility and intentions.” *In re D.E.M.*, 257 N.C. App. at 619, 810 S.E.2d at 378. Indeed, the trial court considered Father’s conduct outside of the six-month determinative period in assessing credibility and intentions, and it determined that Father willfully abandoned Luna in light of his inaction during the determinative six-



month period. *Id.* at 619, 810 S.E.2d at 378. Father’s inaction includes his failure to file responsive pleadings regarding the temporary custody order as documented in the trial court’s findings of fact. *See In re E.H.P.*, 372 N.C. at 388, 831 S.E.2d at 49.

We hold that the trial court’s findings—supported by clear, cogent, and convincing evidence—adequately underpin its conclusion that Father’s actions, or lack thereof, were “wholly inconsistent with a desire to maintain custody” of Luna. *In re C.J.H.*, 240 N.C. App. 489, 503–04, 772 S.E.2d 82, 92 (2015) (quoting *In re B.S.O.*, 234 N.C. App. 706, 710, 760 S.E.2d 59, 63 (2014)). *See In re L.M.M.*, 375 N.C. 346, 351, 847 S.E.2d 770, 775 (2020) (quoting *In re C.B.C.*, 373 N.C. at 19–20, 832 S.E.2d at 695) (“[A]lthough 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.”). The relevant findings are supported by clear, cogent, and convincing evidence; those findings of fact support the trial court’s conclusions of law. *In re S.R.*, 384 N.C. at 520, 886 S.E.2d at 171.

#### **IV. Conclusion**

For the above reasons, we affirm the trial court’s termination of Father’s parental rights for willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7).

**AFFIRMED.**

Judges COLLINS and ARROWOOD concur.

Report per Rule 30(e).