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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-944

Filed 7 May 2025

Cabarrus County, No. 23JT000055-120

IN THE MATTER OF: E.H.Y.

Appeal by petitioner-mother from order entered 27 June 2024 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 22 April 2025.

Hartsell & Williams, P.A. by E. Garrison White, H. Jay White, Sr., and Emily J. Arnold, for petitioner-appellant mother.

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

ARROWOOD, Judge.

Petitioner-appellant mother (“Mother”) appeals from order dismissing her petition to terminate parental rights for respondent-appellee father (“Father”) to their daughter, E.H.Y. (“Eva”)¹. On appeal, mother argues the trial court made findings of fact that were not supported by competent evidence and clear and

¹ A pseudonym is used to protect the identity of the child.

convincing evidence existed to support appellant's motion that one or more grounds existed to terminate father's parental rights. For the following reasons, we affirm the trial court's dismissal.

I. Background

Mother and father together have a daughter, Eva, who was born in April 2021. Father was not initially listed as a parent on Eva's birth certificate, but was later added as Eva's father by a consent order entered 19 April 2021. Mother and father were never married and never had an order for custody. After mother became pregnant with Eva, mother and father bought a home together. When mother was eight months pregnant with Eva, father was incarcerated after being charged with two counts of statutory rape and two counts of first-degree statutory sex offense. Since buying the home together, mother has lived in the home with Eva and has financially supported the entire household.

While father was incarcerated pending trial, Eva was born. Father initially maintained his innocence to mother. Mother continued to have contact with father while he was out of prison on bond and allowed father to visit Eva while he awaited trial. In November 2021, father told mother he had done what he was accused of and eventually pleaded guilty. After father's confession, mother minimized contact with father and the last time father had contact with Eva in person was in March 2022. The last noted phone call between father and mother occurred on 27 August 2022. Mother has had exclusive physical custody of Eva since 7 March 2022.

After the initial allegations were made against father, mother filed for a protective order against father. However, after father requested to have contact with Eva, mother dismissed the protective order. On 2 March 2023, mother filed a petition for the termination of parental rights for Eva. In her petition, mother stated father was presently incarcerated at Scotland Correctional Institution in Laurinburg, North Carolina. In her petition, mother argued father had neglected Eva for the following reasons:

- i. Respondent has been convicted of 1st degree statutory rape, 1st degree statutory sex offense, Statutory rape of a child and statutory sex offense of a child resulting in a period of incarceration of between 16 years and 24 years 3 months.
- ii. Given the length of his sentence, Respondent cannot provide proper care, supervision or discipline for the child for the duration of her minority.
- iii. Respondent's last visit with the child was at the end of 2021.
- iv. Respondent called Petitioner a couple of times, but his last contact was many months ago.
- v. Respondent has never provided any financial support for the child
- vi. Respondent's behavior constitutes neglect by abandonment.

A hearing on mother's petition to terminate parental rights took place on 22 April 2024. During the hearing, father testified that he was convicted on two counts of statutory rape and two counts of first-degree statutory sex offense. Based on his conviction, father testified that he is allowed to have contact with children but he will have to register as a sex offender upon his release from prison. Father stated

he pleaded guilty to the statutory offenses charged against him. Father testified that because he is incarcerated, he would not be able to provide any physical care or financial support while he is in prison. However, after his incarceration on 7 March 2022, father made repeated attempts to contact mother and Eva.

Mother also testified at the hearing and stated that since Eva was born, she has been in mother's custody. Mother stated that father had not provided any financial support for Eva. However, mother testified that after the hearing for the protective order, mother and father agreed with their attorneys to allow father to contact Eva once a week, either via phone or in person. Mother then testified that while father was out on bond, he frequently visited Eva and assisted mother in feeding her. She also testified that while father was incarcerated, he did make several calls to mother until mother blocked father's prison phone number. Mother also acknowledged that father had sent several pieces of mail addressed to Eva.

At the close of mother's evidence, father moved to dismiss the petition, stating mother did not meet her burden of proof to show father had been neglectful and would be neglectful in the future. The trial court granted father's motion to dismiss mother's petition for termination of parental rights, stating "there are not sufficient grounds for termination of parental rights." Specifically, in an order dismissing mother's petition to terminate parental rights filed on 27 June 2024, the trial court made the following findings of fact and conclusions of law:

18. Following his incarceration on March 7, 2022, the

Respondent continued to attempt contact with the Petitioner and the minor child; his last telephone call that was accepted by the Petitioner took place in September 2022, which is barely within six (6) months of the look back period of the filing of the Petition on March 2, 2023.

....

22. The Court cannot find that the Respondent willfully abandoned the minor child according to N.C.G.S. Section 7B-1111(a)(7) and case law for at least six consecutive months immediately preceding the filing of this action.

....

24. Although the Respondent will be incarcerated for the majority of the minor child's life until the child is approximately 17 year old and therefore he will not have the opportunity to form a meaningful bond with the minor child or provide care, there was no evidence before the Court that the Respondent had failed to attempt to make alternate child care arrangements or his inability to do so as a result of his incarceration.

25. There is no evidence before the Court that the Respondent has neglected to form a relationship with the minor child by his efforts to reach the child by telephone calls and mail. The Respondent's attempts to call and the like to the Petitioner and the minor child play into this.

26. There is no evidence of a ban on the Respondent's contact with the minor child because of his sentence, although he will have to register as a sex offender upon his release from prison for a period of time.

27. At the close of the Petitioner's evidence, the Petitioner has failed to meet her burden of proving by clear, cogent, and convincing evidence that the Respondent neglected and/or willfully abandoned the minor child for at least six consecutive months immediately preceding the filing of the Petition.

28. The Petition to Terminate Parental Rights should be dismissed.

On 7 August 2024, mother filed written notice of appeal.

II. Discussion

On appeal, mother argues the trial court erred in dismissing mother’s motion to terminate father’s parental rights. Specifically, mother argues: (1) the trial court made findings of fact that were not supported by competent evidence and (2) the trial court should have found that Eva was neglected under N.C.G.S. § 7B-1111(a)(1) and willfully abandoned under N.C.G.S. § 7B-1111(a)(7). We address each argument in turn.

A. Standard of review

“We review a trial court’s adjudication to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.” *In re. J.S.*, 377 N.C. 73, 77 (2021). “Findings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal.” *Id.* at 78. “The trial court’s findings of fact that are supported by clear, cogent, and convincing evidence are deemed conclusive even when some evidence supports contrary findings. *In re D.D.M.*, 380 N.C. 716, 720 (2022). “It is the trial court’s duty, however, to consider the evidence and pass upon the credibility of the witnesses, and this Court will not reweigh the evidence.” *In re L.H.*, 378 N.C. 625, 636 (2021) (citations omitted) “We review *de novo* whether a trial court’s findings support its conclusions.” *In re Z.D.*, 258 N.C. App. 441, 443–44 (2018). Additionally, “[t]he trial court’s conclusions of law are reviewable *de novo* on appeal.” *In re*

J.D.C.H., 375 N.C. 335, 337 (2020) (citation omitted).

B. Findings of Fact

Mother first argues four of the trial court's findings of fact were not supported by competent evidence. Specifically, mother contests findings of fact 18, 22, 24, and 25. We address each finding in turn.

First, mother contests finding of fact No. 18, which states,

Following his incarceration on March 7, 2022, the Respondent continued to attempt contact with the Petitioner and the minor child; his last telephone call that was accepted by the Petitioner took place in September 2022, which is barely within six (6) months of the look back period of the filing of the Petition on March 2, 2023.

Mother contends that testimony provided during the hearing for her petition suggests father last contacted Eva in August 2022 and not September 2022, meaning there was more than a six-month period between the last contact and the time mother filed her petition. However, during the hearing, mother confirmed that she had blocked father's prison phone number and her action blocked father's ability to call Eva. Mother agreed that there were several calls father made that she did not accept between 21 March 2022 and 3 January 2024. Thus, we conclude that finding of fact 18 was supported by clear, cogent, and convincing evidence.

Next, mother contests finding of fact No. 22, which states, "The Court cannot find that the Respondent willfully abandoned the minor child according to N.C.G.S. Section 7B-1111(a)(7) and case law for at least six consecutive months immediately

preceding the filing of this action.” Mother contends father attempted to use his incarceration as a shield for why he cannot provide for Eva and that his incarceration was caused by his own actions.

However, “[a]lthough the trial court labeled [this finding] as a finding of fact, a determination that respondent did not willfully abandon the child is a conclusion of law, involving the application of legal principles.” *In re B.F.N.*, 381 N.C. 372, 377 n. 4 (2022). “[A]n ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact’ and should be distinguished from the findings of primary, evidentiary, or circumstantial facts.” *In re J.D.C.H.*, 375 N.C. at 342 (internal quotations and citations omitted).

Regardless of how this finding is classified, that classification decision does not alter the fact that the trial court’s determination concerning the extent to which a parent’s parental rights in a child are subject to termination on the basis of a particular ground must have sufficient support in the trial court’s factual findings.

Id. This Court has previously held that “[a]bandonment 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 J.T.C.*, 273 N.C. App. 66, 72 (2020) (citation omitted). “[A] trial court must find that the petitioner has presented clear, cogent, and convincing evidence the parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion[.]” *In re B.R.I.*, 379 N.C. 15, 18 (2021) (internal quotations and citations

omitted).

Here, mother has not presented clear, cogent, and convincing evidence that father willfully abandoned Eva in the six months preceding the filing of her petition. Father made over 500 phone calls, sent multiple letters, and physically visited Eva when he was out on bond. Mother also admitted during cross-examination that father sent \$500.00 to her to contribute to her expenses. These actions taken by father exhibit father's desire to maintain a relationship with Eva. Additionally, father requested to be on Eva's birth certificate on 23 January 2023 and at some point after father was incarcerated, father filed a complaint for visitation. Furthermore, father has not exhibited any conduct to indicate that he wishes to relinquish parental duties for Eva. Thus, there was competent evidence presented to support the trial court's conclusion of law that father did not willfully abandon Eva.

Mother further contends that finding of fact No. 24 is not supported by competent evidence. Finding of fact No. 24 states:

Although the Respondent will be incarcerated for the majority of the minor child's life until the child is approximately 17 year old and therefore he will not have the opportunity to form a meaningful bond with the minor child or provide care, there was no evidence before the Court that the Respondent had failed to attempt to make alternate child care arrangements or his inability to do so as a result of his incarceration.

Mother contends that father's testimony proves he is unable to provide physical care for Eva due to his incarceration. However, alternate child care arrangements are

only necessary if the child is a dependent under N.C.G.S. § 7B-101. This statute defines a dependent juvenile as a child “in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) the juvenile’s parent, guardian, or custodian is unable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement.” N.C.G.S. § 7B-101(9) (2024).

Here, mother does not allege that Eva is a dependent child requiring alternative child care arrangements. Furthermore, father did financially contribute to the home that Eva lives in with mother. Thus, there is no evidence father will not be able to arrange alternate child care arrangements due to his incarceration.

Finally, mother contests finding of fact No. 25, which states,

There is no evidence before the Court that the Respondent has neglected to form a relationship with the minor child by his efforts to reach the child by telephone calls and mail. The Respondent’s attempts to call and the like to the Petitioner and the minor child play into this.

Mother contends father did not attempt to reach her through methods other than the telephone after father’s phone calls stopped connecting to mother. However, mother failed to note that she was the one who blocked father’s prison number or that father filed a complaint for visitation after the calls stopped connecting. Furthermore, mother even admits in her testimony that father made “hundreds of phone calls” to her and that he has sent Eva numerous letters which she has refused to open. Thus, there is competent evidence to support the trial court’s finding that father did not

neglect to form a relationship with Eva.

C. Dismissal of Mother's Petition to Terminate Parental Rights

Mother additionally argues the trial court should have found that Eva was neglected and abandoned by father under N.C.G.S. §7B-1111 and thus erred in dismissing mother's petition to terminate father's parental rights. We disagree.

1. Neglect

Mother argues father has previously neglected Eva and evidence was presented to show father will continue to neglect Eva in the future. A neglected child is a child whose parent, guardian, or caretaker does any of the following:

- a. Does not provide proper care, supervision, or discipline.
- b. Has abandoned the juvenile, except where that juvenile is a safely surrendered infant as defined in this Subchapter.
- c. Has not provided or arranged for the provision of necessary medical or remedial care.
- d. Or whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of this Chapter.
- e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.
- f. Has participated or attempted to participate in the unlawful transfer of custody of the juvenile under G.S. 14-321.2.
- g. Has placed the juvenile for care or adoption in violation of law.

N.C.G.S. § 7B-101(15) (2024). Termination of parental rights based upon N.C.G.S. § 7B-101(15) "requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must

be a showing of past neglect and a likelihood of future neglect by the parent.” *In re D.L.W.*, 368 N.C. 835, 843 (2016). “[I]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision.” *In re J.S.*, 377 N.C. 73, 79 (2021) (internal quotations and citations omitted).

Here, mother argues father previously neglected Eva because when he was out on bond, he did not contribute financially to her well-being. Furthermore, mother argues that father did not financially contribute to the home she lives in with Eva and has not shown that he is able to provide proper care for Eva because mother was always present when father spent time with Eva in person.

However, there is evidence to suggest that father has not neglected Eva. First, father’s incarceration alone is not sufficient to find past neglect. Second, father did contribute financially to the initial inspection of the home and made a payment of \$500 to support the household. Furthermore, mother never challenged finding of fact No. 16, which stated “In addition, there were several periods of time while the Respondent was out of jail on bond that he had contact with the minor child and the Petitioner.” Because mother did not contest this finding of fact, it is binding on appeal. *In re. J.S.*, 377 N.C. at 77.

Finally, mother testified at the hearing that she controlled when father saw Eva to ensure father had “minimum contact” with her. As stated earlier, father made multiple attempts to remain in contact with Eva through phone calls, letters, and a complaint for visitation. Thus, because there is credible and uncontested evidence

that father did not abandon Eva and made efforts to contact her and financially support her, the trial court did not err in finding father did not previously neglect Eva.

Mother also stated that there is evidence of future neglect because father testified that his incarceration will hinder his efforts to support Eva. Mother argues because father will be released from prison when Eva turns 17 years old, he will not be able to form a meaningful bond with her. In addition to father's incarceration, mother merely argues that because father will have to register as a sex offender when he is released from prison, this could hinder "his ability to interact with [Eva]." However, father's incarceration alone is not sufficient to find he will neglect Eva in the future. Although our Supreme Court did consider the length of the prison sentence a relevant factor in terminating parental rights in *In re J.S.*, this factor was not the only factor relevant in the Court's decision. *In re J.S.*, 377 N.C. at 80. The Court hinged its holding on the fact that the trial court also found the parent in that case "would continue to neglect the minor child if the child was placed in his care." *Id.*

Here, the trial court made no such finding. Although the trial court did note that father's prison sentence would not allow him "the opportunity to form a meaningful bond with the minor child or provide care," there was no proof provided by mother to show father was incapable of making alternative child care arrangements or caring for his child because of his incarceration. Furthermore,

father's incarceration does not prevent him from contacting Eva as he is still allowed to have contact with minor children. Finally, father's continued attempts to remain in contact with Eva through phone calls, letters, and his complaint for visitation do not support a finding that father will continue to neglect Eva. Thus, the trial court did not err in dismissing mother's petition to terminate father's parental rights under the theory that Eva is a neglected child.

2. Abandonment

Mother additionally argues that father willfully abandoned Eva because father is responsible for his conduct that resulted in him being incarcerated until Eva is 17 years old. Parental rights may be terminated when "[t]he parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition." N.C.G.S. § 7B-1111(a)(7). Our Supreme Court has provided the following guidance for determining whether willful abandonment has occurred:

We have held that [a]bandonment 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. It has been held that if 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.

In re E.H.P., 372 N.C. 388, 393 (2019) (internal quotations and citations omitted).

"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.” *In re G.G.M.*, 377 N.C. 29, 33 (2021) (internal quotations and citations omitted). “[I]ncarceration, standing alone, neither precludes nor requires a finding of willfulness [on the issue of abandonment,] and [d]espite incarceration, a parent failing to have any contact can be found to have willfully abandoned the child[.]” *In re D.M.O.*, 250 N.C. App. 570, 575 (2016) (internal citations omitted).

Here, mother filed her petition to terminate father’s parental rights on 2 March 2023. Thus, we examine whether father had willfully abandoned Eva during the determinative six-month period from 2 September 2022 to 2 March 2023. First, mother argues that father is responsible for his incarceration, resulting in him willfully abandoning Eva until he is released from prison, which will occur at least when Eva turns 17. However, father’s incarceration, standing alone, is inadequate to support a conclusion that father willfully abandoned Eva. Furthermore, mother did not contest findings of fact that “there were several periods of time while [father] was out of jail on bond that he had contact with [Eva] and [mother].” Although the last noted phone call that connected father with Eva occurred on 27 August 2022, outside the determinative period, father continued to make phone calls to Eva after this date and the calls did not go through because mother had blocked father’s prison phone number. We further note that because father was unable to contact Eva due to mother blocking his calls, he filed a complaint to be added as Eva’s father on her birth certificate and a complaint for visitation on 23 January 2023, before mother

filed her petition to terminate father's parental rights.

Finally, father's actions prior to the six-month period exhibit his intention to remain in Eva's life. Between 21 March 2022 and 3 January 2024, father made 549 phone calls to mother to remain in contact with Eva. Father also sent numerous letters to mother and mother admitted that while she received some mail from father, she did not open all of the letters.

Thus, this evidence tends to show that father did not engage in conduct manifesting his willful determination to forgo all parental duties toward Eva. Rather, his actions exhibit his intention to remain in contact with Eva despite his incarceration. Accordingly, the trial court did not err in dismissing mother's petition to terminate father's parental rights towards Eva under a theory of willful abandonment.

III. Conclusion

For the foregoing reasons, we affirm the trial court's dismissal of mother's petition to terminate parental rights.

AFFIRMED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).