



Petitioner and Respondent each have older children from previous relationships.

Petitioner and Respondent separated on 1 July 2010. A Domestic Violence Protective Order ("DVPO") was entered on 30 July 2010, which prohibited Respondent from having any contact with Petitioner or A.S.B. for a period of one year. Petitioner separated from Respondent and sought the DVPO because Respondent's older daughter alleged she was sexually abused by Respondent. Respondent was criminally charged for the abuse of his daughter.

Petitioner and Respondent entered into a separation agreement on 16 February 2011, and under the terms of the separation agreement, Petitioner was granted custody of A.S.B. The separation agreement provided that Respondent would have no visitation with A.S.B. "until such time as a qualified child therapist deems that a supervised visit between [Respondent] and [A.S.B.] would be both safe and in the child's best interest." Respondent also agreed to pay monthly child support in the amount of \$430.00. Respondent was incarcerated in April 2011, after pleading guilty to two counts of taking indecent liberties with a child, his older daughter.

Petitioner filed a petition to terminate Respondent's parental rights to A.S.B. on 12 July 2012, alleging the following grounds for termination: (1) neglect; (2) willful failure to provide support for A.S.B. as required by the custody agreement entered into by the parties; (3) willful abandonment; and (4) that Respondent had committed a felony assault resulting in serious bodily injury to another child. See N.C. Gen. Stat. § 7B-1111(a)(1), (4), (7), (8) (2011). Though the record shows that Respondent was represented by counsel, Respondent filed a *pro se* response to the petition on 17 August 2012 asking the court to provide him representation, and stating that he loved A.S.B., and had sent letters to Petitioner to give to A.S.B. Respondent also stated that he had made monthly payments to Petitioner, but "not always the \$450.00 amount" due to his difficulty finding steady employment.

The trial court conducted a termination hearing on 29 November 2012. In an order entered 22 January 2013, the trial court found neglect, failure to support, and willful abandonment by Respondent. In the dispositional portion of the order, the trial court found that termination of Respondent's parental rights was in the best interest of A.S.B. Respondent appeals.

On appeal, Respondent challenges the trial court's grounds for termination of his parental rights. Pursuant to N.C. Gen. Stat. § 7B-1111(a) (2011), a trial court may terminate parental rights upon a finding of one of ten enumerated grounds. This Court reviews the trial court's order to determine "whether the trial court's findings of fact were based on clear, cogent, and convincing evidence, and whether those findings of fact support a conclusion that parental termination should occur[.]" *In re Oghenekevebe*, 123 N.C. App. 434, 435-36, 473 S.E.2d 393, 395 (1996) (citation omitted).

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." N.C. Gen. Stat. § 7B-1111(a)(7) (2003). Willful abandonment has been found where "a parent withholds his presence, his love, his care, the opportunity to display filial affection, and [willfully] neglects to lend support and maintenance."

*In re D.J.D., D.M.D., S.J.D., J.M.D.*, 171 N.C. App. 230, 241, 615 S.E.2d 26, 33 (2005) (citations omitted).

Because Petitioner filed her petition to terminate Respondent's parental rights on 12 July 2012, the relevant time period for considering whether Respondent "abandoned" A.S.B. is 12 January 2012 to 12 July 2012. The trial court made the

following findings of fact to support this ground for termination:

43. The Court [] finds that Father has not provided any cards, gifts or support since the separation agreement was entered except for one card provided to mother after the TPR was filed.
44. . . . [T]he Court finds by clear, cogent and convincing evidence that Father has willfully abandoned the minor child [] for six months immediately preceding the filing of the TPR petition on July 12, 2012.
45. In support of [this] ground, the Court finds that Father has not provided financial support or gifts; has not attempted to contact the minor child before the filing of the petition.
46. The Court finds that Mother has remained in the same home; has the same employment; the same cell phone number and email address that she had at the time Father and Mother were married and since they separated.

Of these findings of fact, Respondent only takes exception to number 44, which is actually a conclusion of law.

Respondent has not challenged findings of fact numbers 43, 45, and 46. We therefore presume that they are supported by competent evidence and, consequently, they are binding on appeal. See *In re M.D., N.D.*, 200 N.C. App. 35, 43, 682 S.E.2d 780, 785 (2009). These findings demonstrate Respondent had no

contact with A.S.B. during the relevant time period, despite having the ability to maintain some level of contact with A.S.B. See *id.* at 43, 682 S.E.2d at 785-86 (holding that a father had willfully abandoned his children because he had not visited, spoken to, or sent any cards or gifts to them for several years despite having the ability to do so).

Respondent argues his actions were not willful because the separation agreement, the DVPO, and a bond order prohibited him from contacting A.S.B. We disagree. Of these three documents, only the two orders prohibited Respondent from contacting A.S.B. The DVPO prohibited Respondent from having "contact" with Petitioner and A.S.B. and specified that "[n]o contact includes any defendant-initiated contact direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine." The DVPO, however, was only effective until 30 July 2011 and, therefore, was not in effect during the relevant time period. Respondent's 12 November 2010 bond order also prohibited him from having contact with his children, but it ceased to be in effect after Respondent was incarcerated in April 2011. N.C. Gen. Stat. § 15A-534(h) (2011). Therefore, neither of these orders supports Respondent's argument.

The parties' separation agreement continued to be in effect during the relevant time period, but it did not prohibit Respondent from contacting A.S.B. The separation agreement provided that Respondent "will have no *visitation* with the child until such time as a qualified child therapist deems that a supervised visit between [Respondent] and child would be both safe and in the child's best interest." Emphasis added. Nothing in the separation agreement, however, prohibited Respondent from *contacting* A.S.B. Given that the separation agreement specifically used the term "visitation" as opposed to "contact," we decline to construe "visitation" as meaning "contact." Therefore, Respondent had an entire year prior to the filing of the termination petition to attempt to contact A.S.B., but failed to do so. The fact that Respondent was incarcerated was not dispositive, as this Court has noted that "a respondent's incarceration, standing alone, neither precludes nor requires a finding of willfulness[.]" *In re McLemore*, 139 N.C. App. 426, 431, 533 S.E.2d 508, 511 (2000) (citation omitted); *see also D.J.D.*, 171 N.C. App. at 241, 615 S.E.2d at 33-34 ("Despite incarceration, a parent failing to have any contact can be found to have willfully abandoned the child[.]") (citation omitted). We hold that the trial court properly

terminated Respondent's parental rights based on willful abandonment.

Affirmed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).