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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-317

Filed 7 November 2023

Surry County, No. 21 JT 6

IN THE MATTER OF: A.F.G.T., A Minor Child.

Appeal by respondent-appellant-father from orders entered 4 January 2023 and 5 January 2023 by Judge William F. Southern, III in District Court, Surry County. Heard in the Court of Appeals 3 October 2023.

Richard Blake Cheek for petitioner-appellee Surry County Department of Social Services.

James N. Freeman, Jr. for appellee guardian ad litem.

Emily S. Dezio for respondent-appellant-father.

STROUD, Chief Judge.

Respondent-appellant-father appeals from an order adjudicating the grounds for termination of his parental rights to his minor daughter, Angela,¹ based on neglect under North Carolina General Statute § 7B-1111(a)(1), failure to make reasonable progress under North Carolina General Statute § 7B-1111(a)(2), dependency under

¹ A pseudonym is used to protect the minor child's identity.

North Carolina General Statute § 7B-1111(a)(6), and abandonment under North Carolina General Statute § 7B-1111(a)(7). He also appeals from the trial court’s disposition order. Since the trial court’s findings of fact in the adjudication order are supported by clear and convincing evidence, and the findings support the conclusion of willful abandonment, we affirm the adjudication order. Since Father raised no specific arguments as to the disposition order, we affirm the disposition order also.

I. Background

Angela was born in Surry County, North Carolina in December 2020. Angela was hospitalized that same day “due to neonatal abstinence syndrome and other complications at birth.” Angela’s mother “admitted to using methamphetamines just two (2) days before giving birth[.]” and Angela remained hospitalized until 5 January 2021.² Respondent-appellant-father (“Father”) admitted to the Surry County Department of Social Services (“DSS”) that he and Angela’s mother were “actively using [illicit] substances[.]” Upon Angela’s release from the hospital on 5 January 2021, DSS “applied for and received nonsecure custody of [Angela]”

On or about 5 January 2021, DSS filed an “Abuse, Neglect, and Dependency Juvenile Petition alleging that [Angela] was a neglected juvenile” The adjudication and disposition hearing determining Angela to be neglected occurred on 20 May 2021, and the Juvenile Adjudication Order (“First Adjudication Order”) and

² Angela’s mother executed a Relinquishment of Minor on or about 18 March 2022 and is thus not a party to this appeal.

Juvenile Disposition Order (“First Disposition Order”) was entered on 2 June 2021. Father did not attend this hearing. In addition to the substance abuse issues, the trial court found in the First Adjudication Order “[p]arents had minimal supplies for the newborn and no safe sleeping space.” Due to the determination Angela was neglected, Angela was placed in a foster home while DSS attempted to enter into a case plan with Father and Angela’s mother.

After DSS obtained nonsecure custody of Angela, DSS “made several attempts for [Father] to come to [DSS] to enter a case plan to alleviate the issues that led to [Angela] being removed from his custody and care.” On 23 June 2021, Father “was scheduled to visit with [DSS] . . . to enter a case plan” but did not show up. DSS was unable to enter into a case plan with Father until 3 December 2021, after DSS discovered Father was incarcerated. As part of Father’s case plan, he was required to: “a. [r]eceive a substance abuse and mental health assessment and follow all recommendations; b. [o]btain appropriate housing; c. [p]articipate in random drug screens; d. [o]btain gainful employment; and e. [c]omplete parenting and life skills courses.” Father was incarcerated several times for short periods during the case, and on 7 November 2021, he was in the Surry County jail. He was then incarcerated in Central Prison in Raleigh, with a projected release date in 2024.

When Angela first entered the care of DSS in January 2021, visitation with Father was set up through FaceTime due to the COVID-19 pandemic. From January 2021 through March 2021, when visits were done virtually, Father “participated in 7

out of 18 FaceTime calls that the foster parents completed.” After DSS started implementing in-person visitations again in March 2021, DSS attempted to set up meetings with Father, but such attempts were unsuccessful. At the time of the termination (“TPR”) hearing, Father had never visited Angela in-person. Father called DSS regarding Angela only twice, both times before June 2021, although Father was never told he was prohibited from visiting with Angela. Between March 2021 and the TPR hearing, Father had not visited Angela in-person or via FaceTime and had not contacted DSS asking for any photos of Angela or about her well-being. Last, between Father’s incarceration in November 2021 and the TPR hearing, he did not send Angela any gifts, letters, cards, money, supplies, or other tokens of affection, nor did he send anything to DSS for Angela’s benefit.

DSS filed its petition to terminate Father’s parental rights on 21 April 2022 and Father was served on or about 15 May 2022. A permanency planning review hearing was conducted on or about 9 June 2022. The order in the permanency planning review hearing was entered 18 August 2022, which stated the plan “shall remain . . . a primary plan of adoption with a concurrent, secondary plan of reunification.” The permanency planning review hearing set the TPR hearing for 10 August 2022. Father filed a motion to dismiss and an answer to the TPR petition on or about 28 September 2022. After a continuance on behalf of Father, the TPR hearing occurred on or about 5 October 2022. The trial court entered the Order of Adjudication (“Second Adjudication Order”) on 4 January 2023 and the Order of

Disposition (“Second Disposition Order”) on 5 January 2023, terminating Father’s parental rights. Father timely appealed the Second Adjudication Order and Second Disposition Order.

II. Analysis

On appeal, Father argues findings of fact 22, 23, 25, 26, 27, 28, 29, 30, 31, 35, 41, 43, 45, 46, 51, and 59 in the Second Adjudication Order are not supported by the evidence. Next, Father contends “[t]he trial court’s findings are inadequate to support its conclusion of willful abandonment as these findings fail to address [Father’s] efforts or ability to have a connection with Angela during the relevant time period.” Essentially, Father argues that he could not have willfully abandoned Angela since he was incarcerated during most of the preceding six months before the TPR hearing.

We first note that while Father included both the Second Adjudication Order and Second Disposition Order terminating his parental rights in his notice of appeal, he raised no arguments regarding the Second Disposition Order in his brief. As a result, Father has abandoned any arguments relating to the Second Disposition Order. *See* N.C. R. App. P. 28(a) (“Issues not presented and discussed in a party’s brief are deemed abandoned.”). Therefore, we will address only the Second Adjudication Order.

A. Standard of Review

Father’s appeal is based only on the adjudication stage of the TPR hearing.

For purposes of the standard of review, this is significant since “[a] different standard of review applies to [the adjudication stage and the dispositional stage].” *In the Matter of S.R.*, 384 N.C. 516, 520, 886 S.E.2d 166, 171 (2023) (citations omitted). “At the adjudication stage, the party petitioning for the termination must show by clear, cogent, and convincing evidence that grounds authorizing the termination of parental rights exist.” *Id.* (citations and quotation marks omitted). “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.” *Id.* (ellipses and brackets in original) (citations and quotation marks omitted). Last, “[w]e review whether the findings of fact support the conclusions of law, and conclusions of law are reviewed de novo.” *Id.* (citations omitted).

B. Findings of Fact

Father specifically contends findings of fact 22, 23, 25, 26, 27, 28, 29, 30, 31, 35, 41, 43, 45, 46, 51, and 59 in the Second Adjudication Order are not supported by the evidence. Father grouped his challenges to the findings of fact based on the specific termination ground being challenged. We will group our discussion of Father’s arguments regarding the findings of fact similarly, but we will address all the challenged findings of fact first because the trial court’s order did not limit its conclusions of law to any particular grouping of facts.

1. Findings of Fact 22, 23, 25, 26, 27, 28, 29, 30, 31, 35, 51, and 59

Findings 22, 23, 25, 26, 27, 28, 29, 30, 31, 35, 51, and 59 state:

22. However, during the ten-month period after [Angela] came in [DSS] custody prior to [Father's] incarceration, [Father] made no progress in alleviating any of the issues that led to [Angela] being removed from his custody and care.

23. [DSS] made monthly attempts to have [Father] participate in drug screens following [Angela] coming into [DSS] custody. [DSS] was unable to contact [Father]. On March 1, 2021, [DSS] requested [Father] to participate in a drug screen following a court proceeding. [Father] agreed to the request in court but failed to appear for the drug screen.

.....

25. [DSS] made multiple attempts throughout the life of the underlying case to have [Father] enter into a visitation plan with [Angela], but he has continuously refused or neglected to engage with [DSS] about [Angela].

26. [Father] has known [Angela's] whereabouts and is aware of his ability to contact [DSS] to discuss [Angela] and he has willfully chose not to communicate about [Angela] with [DSS].

27. [Father] has never contacted [DSS] to discuss [Angela's] wellbeing or establishing contact with [Angela].

28. [Father] did not send any cards, letters, gifts, supplies, or any other tokens of affection to [Angela] while she has been in [DSS] custody. This period includes [Angela's] first Christmas and birthday.

29. [Father] has not made reasonable progress under the circumstances in correcting those conditions which lead to [Angela's] removal more than twenty (20) months ago.

30. [Father] has not maintained regular communication with [Angela] while she has been in [DSS] custody although he was encouraged to do so by [DSS].

31. [Father] has not visited or contacted [Angela] since March of 2021.

....

35. [Father] had the opportunity to make reasonable progress on alleviating the issues that led to the removal of [Angela] almost twenty (20) months ago and he failed to do so.

....

51. [DSS] attempted to arrange visitations between [Father] and [Angela] but [Father] failed to take advantage of these attempts.

....

59. Due to [Father's] criminal history, his failure to take any remedial measures in addressing the issues that led to [Angela's] removal, and his lack of engagement with [Angela] since March of 2021, this Court finds that continuing custody of [Angela] with [Father] is likely to result in serious emotional or physical damage to [Angela]. The Court makes this finding based on the evidence beyond a reasonable doubt.

Father groups his challenge to these findings in his argument regarding North Carolina General Statute § 7B-1111(a)(2), which applies when a parent leaves “the juvenile in foster care or placement outside the home for more than 12 months” N.C. Gen. Stat. § 7B-1111(a)(2) (2021). Father’s main argument about these findings is that the “findings place the relevant time period to the initiation of when [Angela] came into custody on January 5, 2020, rather than the 12 months prior to the petition.” Father does not contend the evidence does not support these findings, but instead his challenge essentially relates to whether the trial court could properly

consider conduct outside the twelve-month period specified in North Carolina General Statute § 7B-1111(a)(2). Since we hold the trial court did not err by concluding Father willfully abandoned Angela under North Carolina General Statute § 7B-1111(a)(7), we need not discuss further whether the trial court considered conduct beyond the twelve-month period in its conclusion regarding North Carolina General Statute § 7B-1111(a)(2). See *In the Matter of C.K.I.*, 379 N.C. 207, 210, 864 S.E.2d 323, 326 (2021) (“[A] single ground for terminating parental rights is sufficient to support a termination order, [and] this Court can uphold the trial court’s order based on one ground without reviewing any remaining ground.”) (citation omitted). Therefore, Father’s challenge to findings 22, 23, 25, 26, 27, 28, 29, 30, 31, 35, 51, and 59 is overruled.

2. Findings of Fact 41, 43, and 45

Father contends findings 41, 43, and 45 are not supported by the evidence.

Findings 41, 43, and 45 state:

41. [DSS] took efforts to ensure that [Father] understood his case plan and made multiple requests for him to engage with [DSS] and [Angela] throughout the life of the underlying case.

....

43. The Court finds by clear, cogent, and convincing evidence that [Father] has neglected [Angela] and that the likelihood of repetition of neglect is significant if [Angela] was to be returned to [Father] due to his lack of progress in his case plan, his minimal visitation with [Angela], his failure to engage with [DSS], his failure to provide and

support for [Angela], and the lack of changed circumstances between when [Angela] was removed from [Father's] custody in January of 2021 and when this hearing took place in October of 2022.

....

45. The Court finds by clear, cogent, and convincing evidence that due to his incarceration until 2024, his unresolved and substantial substance abuse issues, [Father] is not capable of providing proper care and supervision for [Angela], such that [Angela] is a dependent juvenile with[in] the meaning of North Carolina General Statute § 7B-101. There is a reasonable probability that [Father's] incapability will continue into the foreseeable future due to his incarceration, the lack of progress in his case plan, his lack of engagement with [DSS], his lack of visitation with [Angela], his failure to provide and support for [Angela], and the lack of changed circumstances between when [Angela] was removed from [Father's] custody in January of 2021 and when this hearing took place in October of 2022.

As to finding 41, Father points to testimony from DSS that states:

[DSS] did go to the jail one time early in the case to do a case plan with [Father], but once we arrived we were informed that he had bonded out. We received a phonecall from [Father] and [Angela's mother] on June 23rd of 2021, and they both agreed to come to [DSS] that day at 4:15 p.m. to sign their case plan and they did not show up. We had very little contact with [Father] throughout the case. And then once we were made aware that he was in the jail we went to the jail and completed a case plan with him. And that was December 3rd of 2021.

But Father omits further testimony from DSS that strengthens finding 41.

The DSS social worker testified that "[DSS] attempted multiple times to meet with [Father] to enter a case plan. He failed to meet with us several times." The testimony

quoted by Father stating DSS “had very little contact with [Father] throughout the case[,]” combined with the additional testimony regarding multiple attempts to contact Father by DSS, is clear and convincing evidence. *See S.R.*, 384 N.C. at 520, 886 S.E.2d at 171 (“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.” (ellipses and brackets in original) (citations and quotation marks omitted)). Thus, finding 41 is supported by the evidence.

As to finding 43, Father argues “[t]here was no evidence offered or testified to regarding acts of neglect at the time of the hearing and for this reason, this ground should be vacated.” Since Father’s argument seems to be directed more to the trial court’s conclusion as to neglect instead of the facts within this finding, we need not address whether finding 43 considered “acts of neglect at the time of the hearing.” *See C.K.I.*, 379 N.C. at 210, 864 S.E.2d at 326.

As to finding 45, Father states “in order to terminate a parent’s rights, the court must find by clear, convincing and cogent evidence that this dependency must exist into the foreseeable future. . . . In this case, with a projected release date of May 2024, the court’s finding of fact #45 is not supported by the evidence.” Similar to finding 43, Father’s main argument about finding 45 focuses on the trial court’s conclusion of law as to dependency under North Carolina General Statute § 7B-1111(a)(6), not the underlying facts of the finding. Father acknowledges that his

release date is in 2024. Thus, clearly Father is not challenging the part of finding 45 as to Father's release date but he is instead challenging the overall conclusion of dependency. Again, since we will address only the conclusion of abandonment, we need not discuss whether Angela is dependent. *See C.K.I.*, 379 N.C. at 210, 864 S.E.2d at 326.

Therefore, Father's challenges to findings 41, 43, and 45 are overruled.

3. *Finding of Fact 46*

Finding of fact 46 states:

46. In the six (6) months prior to the [DSS] filing of the Petition to Terminate [Father's] Parental Rights on April 21, 2022, [Father]:

- a. Did not visit or contact [Angela];
- b. Did not request visitation or communication with [Angela];
- c. Did not send gifts, letters, cards, supplies, or any tokens of affection to [Angela]; and
- d. Did not contact [DSS] to discuss about the wellbeing of [Angela].

Finding 46 is supported by "clear, cogent, and convincing evidence" since there is testimony to support each part of the finding. *See id.* The testimony from DSS Foster Care Supervisor Jade Wiggington ("Ms. Wiggington"), who was the Foster Care Supervisor in Angela's case, supports each part of finding 46. Ms. Wiggington testified:

Q. Now, was [Father] allowed the opportunity to visit with

[Angela]?

A. Yes. When [Angela] entered care it was during COVID so visitations were initially set up through FaceTime visits. So from January to March of 2021 [Father] participated in 7 out of 18 FaceTime calls that the foster parents completed. In March of 2021 [DSS] did implement in person visitation again, and we attempted to set up meetings, to set up visitation plans with [Father]. However, those attempts were unsuccessful. So he has never visited [Angela] in person

Q. And the last . . . visits would have occurred at the latest in March of 2021?

A. Correct.

Q. Now, Ms. Wiggington, has [DSS] ever told, . . . [Father] that he's not allowed to visit with [Angela]?

A. No.

Q. Ms. Wiggington, prior to [Father's] incarceration how often did [Father] contact [DSS]?

A. In reviewing and preparing for this hearing in documentation I could find twice that he called [DSS]. And those are prior to June of 2021. The last time he contacted [DSS] on his own was June 23rd of 2021

Q. Now, so to be clear, [Father] contacted [DSS], correct?

A. Correct.

Q. So he obviously had the telephone number to [DSS].

A. Yes.

Q. And you say that the last time that he contacted [DSS] was in June of 2021.

A. Correct.

Q. So since June of 2021 [Father has] not contacted [DSS] to check on the wellbeing of [Angela]?

A. No.

Q. Since . . . the last time that [Father] exercised FaceTime visits . . . with [Angela], has [Father] contacted [DSS] and asked for any photos of [Angela]?

A. No, not to my knowledge.

Q. Has he wrote any letters to [DSS] asking about the wellbeing of [Angela]?

A. No.

Q. Since his incarceration in November of 2021 has [Father] sent any gifts, letters, cards, money, supplies, or other tokens of affection to [Angela]?

A. No.

Q. Has he sent any to [DSS] for [Angela's] benefit?

A. No.

This testimony is “clear, cogent, and convincing evidence” that supports finding 46. *See S.R.*, 384 N.C. at 520, 886 S.E.2d at 171. First, finding 46 specifically addresses the six months preceding the filing of the TPR petition, which was filed on 21 April 2022. Father contends “the relevant time period was from *November* 21, 2021, through April 21, 2022.” However, six months preceding 21 April 2022 is 21 *October* 2021. Thus, the relevant six-month period preceding the filing of the TPR is 21 October 2021 through 21 April 2022.

Finding 46 first states, during the relevant six-month period, Father “[d]id not

visit or contact [Angela.]” Ms. Wiggington testified that Father’s last visit, either via FaceTime or in-person, was in March 2021. Since March 2021 was substantially before the six months preceding the filing of the TPR, this part of finding 46 is supported by “clear, cogent, and convincing evidence.” *See id.*

Next, finding 46 states Father “[d]id not request visitation or communication with [Angela][.]” Ms. Wiggington testified that the last time Father contacted DSS regarding Angela was June 2021, and Father did not contact DSS at all to check on Angela’s well-being. Therefore, this part of finding 46 is supported by “clear, cogent, and convincing evidence.” *See id.*

Finding 46 then states Father “[d]id not send gifts, letters, cards, supplies, or any tokens of affection to [Angela][.]” Ms. Wiggington was asked verbatim whether Father sent any “gifts, letters, cards, money, supplies, or other tokens of affection to [Angela]” since his incarceration in November 2021, to which Ms. Wiggington responded “[n]o.” Ms. Wiggington also confirmed Father did not send anything to DSS for Angela’s benefit. Therefore, this portion of finding 46 is supported by “clear, cogent, and convincing evidence.” *See id.*

Last, finding 46 states Father “[d]id not contact [DSS] to discuss about the wellbeing of [Angela].” Ms. Wiggington was asked specifically whether Father contacted DSS at all since June 2021 “to check on the wellbeing of [Angela]” or whether Father “wrote any letters to [DSS] asking about the wellbeing of [Angela][.]” to which Ms. Wiggington responded “[n]o” to both questions. Thus, this part of

finding 46 is supported by “clear, cogent, and convincing evidence.” *See id.*

Overall, since Angela’s DSS caseworker, Ms. Wiggington, testified to each part of finding 46, there was “clear, cogent, and convincing evidence” to support the entire finding. *See id.* We therefore reject Father’s challenge to finding of fact 46. We next discuss whether the trial court’s findings of fact, including finding of fact 46, support the conclusion that Father willfully abandoned Angela.

C. Willful Abandonment

Father challenges the trial court’s “conclusion of willful abandonment” as not supported by the findings of fact. While Father’s brief does not point to a specific conclusion of law from the trial court, conclusion of law 10 states “Father has willfully abandoned [Angela] for six (6) consecutive months preceding the filing of [DSS’s] petition to Terminate [his] parental rights.” Father contends “[t]he trial court’s findings are inadequate to support its conclusion of willful abandonment as these findings fail to address [Father’s] efforts or ability to have a connection with Angela during the relevant time period.” Essentially, Father’s argument is that since he was incarcerated during most of the relevant six-month period preceding the filing of the petition for termination of parental rights, he could not have *willfully* abandoned Angela.

Generally, “[t]he court may terminate the parental rights upon a finding . . . (7) [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). Further, “[i]n the context of abandonment, willfulness is more than an intention to do a thing; there must also be purpose and deliberation.” *In the Matter of D.M.O.*, 250 N.C. App. 570, 572-73, 794 S.E.2d 858, 861 (2016) (citations and quotation marks omitted). To terminate parental rights based on willful abandonment, “[t]he findings must demonstrate that a parent had a purposeful, deliberative, and manifest willful determination to forego all parental duties and relinquish all parental claims to the child.” *Id.* (citations and quotation marks omitted). “Factors to be considered include a parent’s financial support for a child and emotional contributions, such as a father’s display of love, care and affection for his children.” *In the Matter of D.E.M.*, 257 N.C. App. 618, 619, 810 S.E.2d 375, 377 (2018) (citations and quotation marks omitted).

Father’s argument he did not willfully abandon Angela centers on his incarceration. He contends “the actions of a father who is incarcerated cannot be willful.” But Father’s argument overstates the effect of incarceration. A parent’s incarceration is an important consideration, but it does not immunize a parent against termination of parental rights. *See id.* at 621, 810 S.E.2d at 378. Generally, “incarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision.” *Id.* “Although a parent’s options for showing affection while incarcerated are greatly limited, a parent will not be excused from showing interest in his child’s welfare by whatever means available.” *Id.* (citations and quotation marks omitted).

While Father is correct in his assertion incarceration cannot, standing alone, be used to show willfulness for purposes of abandonment, Father is trying to use his incarceration as a “shield” against such a conclusion. *See id.*

Our Supreme Court, in *In re B.R.L.*, held that despite the mother being “incarcerated for over half of the determinative six-month period[,]” the trial court erred in determining the mother willfully abandoned her child. *See In the Matter of B.R.L.*, 379 N.C. 15, 19-20, 863 S.E.2d 763, 768 (2021). Despite the mother’s incarceration, she did not willfully abandon the child “considering her two visits, her attempts to schedule additional visits, and her filing of a motion to increase her visitation, all of which occurred during the relevant time period *before* the petition for termination was filed.” *Id.* at 20, 863 S.E.2d at 768-69 (emphasis added).

Next, the father in *In re Shermer* was also incarcerated when the trial court terminated his parental rights for willful abandonment. *See In the Matter of Shermer*, 156 N.C. App. 281, 290-91, 576 S.E.2d 403, 409-10 (2003). However, this Court held that there was not “clear, cogent, and convincing evidence . . . to support the trial court’s conclusion” since the father “maintained some contact with [the children], informed DSS that he did not want his rights terminated, and told DSS that he wished to maintain custody of his children.” *Id.*

Further, this Court upheld a trial court’s determination of willful abandonment by an incarcerated father even though the father had sent the child two cards in the six months before the TPR was filed and one card in the six months

before the TPR hearing. *See In the Matter of J.L.K.*, 165 N.C. App. 311, 318, 598 S.E.2d 387, 392 (2004). While this Court relied on other findings, in addition to the communications sent to the child during the relevant period, in determining willful abandonment, the point remains that the father in *J.L.K.* had more communication during the relevant six-month period with the child than the present case. *See id.*

Last, while “the determinative period for adjudicating willful abandonment is the six consecutive months preceding the filing of the [TPR][,]” “the trial court may consider [a parent’s] conduct outside [the six-month] window in evaluating [a parent’s] credibility. . . .” *See D.M.O.*, 250 N.C. App. at 573, 794 S.E.2d at 861. This is significant since Father essentially contends, because he was incarcerated, he was unable to do anything to maintain contact with Angela or DSS. However, the trial court made many other findings of fact, in addition to challenged finding 46, which show his incarceration was not the primary basis for its findings as to Father’s abandonment. Not only did Father fail to have any contact with Angela during the relevant six-month period, Father did not have contact with Angela since March 2021, as shown by finding of fact 31. Father did not see Angela in person at all after she was six days old. Father did not have contact with DSS since June 2021, despite having the contact information to do so, and Father failed to appear to a “scheduled . . . visit with [DSS] on June 23, 2021 to enter a case plan[.]” as indicated in finding of fact 18. According to finding of fact 52, “[DSS] attempted to contact . . . [Father] through various modalities including but not limited to, telephone and Facebook

Messenger.” Finally, the trial court took “judicial notice of all prior juvenile . . . court orders[,]” one of which includes a finding from the First Adjudication Order where Father did not appear for the initial adjudication and disposition hearing on 20 May 2021. While these findings cannot be the determinative factors for willfulness since they did not all occur during the relevant six-month period, they can rebut Father’s assertion that incarceration was the sole cause of his failure to contact Angela or DSS.

Father states, in his brief, that since “[Father] was not even allowed phone calls with counsel, it was not within a reasonable expectation that he could have the ability to set up Facetime visits with his daughter during the relevant time period.” However, there was no evidence presented at the hearing to support Father’s contention he was entirely prohibited from phone calls, even with his own counsel. The only source Father points to as evidence that he could not have phone calls with counsel is his own motion for continuance. Further, Father was not required or expected to “set up Facetime visits” with Angela while he was incarcerated. And even if Father was not allowed to have phone calls, there is no evidence Father was not allowed any contact with the outside world at all. He still had the ability to send a card or letter inquiring about Angela’s welfare, but he did not. Thus, this argument has no merit.

The trial court did not rely on Father’s incarceration alone as the basis to support a conclusion of willful abandonment. *See D.E.M.*, 257 N.C. App. at 621, 810 S.E.2d at 378. Incarceration cannot be used as a shield to prevent a conclusion of

willful abandonment. *Id.* Here, father is attempting to use his incarceration as a shield. First, Father was not incarcerated until 7 November 2021, and the relevant time period in determining willful abandonment started on 21 October 2021, meaning Father had about two-and-a-half weeks before incarceration to contact Angela or DSS.

Second, there is no evidence in the record to suggest Father made *any* attempt to contact Angela or DSS, and Angela's caseworker testified to such failures to maintain or attempt contact during the TPR hearing. While Father filed a motion to dismiss the TPR on or about 28 September 2022, his motion was filed *after* the relevant six-month period preceding the filing of the TPR. Before the termination petition was filed, Father did not file any motions to increase visitation or alter his current plan with DSS during the relevant time period. *See B.R.L.*, 379 N.C. at 20, 863 S.E.2d at 768 (noting mother filed a motion to increase visitation with the minor child during the relevant time period before the TPR hearing in its determination the mother did not willfully abandon the child.). In fact, he did not even take advantage of most of the visitation he had been granted prior to the filing of the petition to terminate. Finally, Father's contention that incarceration and restrictions imposed due to the COVID-19 pandemic were the only reasons he was unable to contact DSS or express interest in Angela's welfare is unconvincing since he did not attempt to contact DSS or Angela since at least June 2021, well before his incarceration date of November 2021 and the TPR hearing in April 2022.

Overall, even recognizing the limitations imposed on Father by his periods of incarceration, Father failed to take any actions to demonstrate his “love, care and affection for his [child]” during the six-month period preceding the filing of the TPR. *See D.E.M.*, 257 N.C. App. at 619, 810 S.E.2d at 377 (citations and quotation marks omitted). Thus, the trial court’s findings support its conclusion of willful abandonment. Further, “a single ground for terminating parental rights is sufficient to support a termination order, [and] this Court can uphold the trial court’s order based on one ground without reviewing any remaining ground.” *C.K.I.*, 379 N.C. at 210, 864 S.E.2d at 326 (citations omitted). We therefore will not address Father’s arguments as to the additional grounds for termination as found by the trial court.

III. Conclusion

The trial court did not err in adjudicating Angela as willfully abandoned by Father. All the trial court’s findings of fact were supported by clear and convincing evidence, and these findings support the trial court’s conclusion that Angela was willfully abandoned. Father made no arguments regarding the trial court’s disposition order. We therefore affirm the trial court’s adjudication and disposition orders.

AFFIRMED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).