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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-355

Filed 19 March 2024

Rutherford County, Nos. 21 JT 123-25

IN THE MATTER OF: A.G.C., E.C.C., A.A.C.

Appeal by respondent-father from order entered 5 January 2023 by Judge Ellen Shelly in Rutherford County District Court. Heard in the Court of Appeals 4 March 2024.

*Jarald N. Willis for petitioner-appellee mother.*

*Edward Eldred for respondent-appellant father.*

PER CURIAM.

Respondent-father (“Father”) appeals a trial court order terminating his parental rights to A.G.C. (“Annie”), E.C.C. (“Eric”), and A.A.C. (“Amy”).<sup>1</sup> We affirm the trial court’s order.

**I. Background**

Petitioner-mother (“Mother”) and Father are the parents of Annie (born in

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<sup>1</sup> Pseudonyms are used to protect the identity of the minor children. See N.C. R. App. P. 42.

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2011), Eric (born in 2013), and Amy (born in 2015). The parties were in a dating relationship that ended in 2018. A domestic violence protective order (“DVPO”) was granted in favor of Mother and against Father on 24 October 2018. The DVPO awarded Mother temporary custody of the minor children; Father was granted supervised visitation.

The trial court conducted a custody hearing on 16 September and 25 October 2019 and entered a custody order on 25 October 2019. The court found that since Mother and Father had stopped dating, Father had not provided child support for the minor children, regularly visited them, or provided gifts. Mother had provided for the children’s needs as the “sole caregiver.” Father submitted to a court-ordered drug screen and tested positive for marijuana and cocaine. Father did not have a safe and suitable place to visit with his children. Mother had a safe and suitable home for the children and could financially support them.

The court awarded Mother full care, custody, and control of the minor children and granted Father supervised visitation every other Saturday for three hours at the children’s paternal grandmother’s residence. However, before the first visitation could commence, Father was required to obtain a substance abuse assessment, follow all recommendations of said assessment, and produce a drug screen free of all illegal controlled substances. Father was also forbidden from assaulting, threatening, abusing, following, harassing, or interfering with Mother.

Mother filed petitions to terminate Father’s parental rights to each of the

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children on 15 November 2021. Mother alleged that each child had been in her custody since that child's birth, that she provided their care and support, and that Father "has never been involved in the minor child[ren]'s li[ves] and ha[d] never provided any care or support for the minor child[ren]." Mother contended that grounds existed to terminate Father's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) "in that the [Father] has neglected the minor child[ren] . . . by abandoning the minor child[ren] and not having any substantial physical contact with the minor child[ren] since August 2018" and "has willfully abandoned the juvenile[s] for at least six consecutive months immediately preceding the filing of the petition or motion by not providing any physical, emotional, spiritual, or financial support and well-being of the minor child[ren]." Father filed an answer denying Mother's allegations.

The trial court conducted a hearing on the petitions to terminate Father's parental rights on 1 December 2022. Both Mother and Father were present. The court found clear, cogent, and convincing evidence that Father had not seen his minor children in the six months preceding the filing of the petitions to terminate his parental rights or even since August 2018. Since August 2018, Father had not attended school functions, doctors' visits, or extracurricular activities, and he had not contacted Mother to see how the children were doing. Mother had not prevented Father from attending school functions, extracurricular activities, or doctors' visits. The court found that Father had purchased gifts for the minor children which were

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delivered by the paternal grandmother, who contacted Mother to learn the children's needs. But the paternal grandmother never informed Mother or the children that the gifts were purchased by Father. Father was aware that the paternal grandmother did not disclose that the gifts were from him and agreed with this practice. Father also did not ask the paternal grandmother about the children in the six months prior to the filing of the petitions to terminate his parental rights. Mother was engaged at the time of the hearing and testified that her fiancé planned to adopt the children as soon as possible.

The trial court acknowledged Father's testimony during the termination hearing that, following entry of the trial court's 25 October 2019 custody order, he did not submit to a substance abuse assessment because he could not find a place to administer it, and that he did not submit to a drug test because he would test positive for illegal substances. Father did submit to a substance abuse assessment in March 2022—after the petitions to terminate his parental rights were filed. Based on the assessment, it was recommended that Father take substance abuse classes, but as of the termination of parental rights hearing, he had not enrolled. Father testified that he would still test positive for illegal substances. As for his lack of communication with Mother, Father believed the court's custody order forbade contact with her, but he also failed to ask the paternal grandmother about the minor children. Father testified that it was Mother's responsibility to contact him about the minor children. Father also testified to his belief that it was better to purchase presents for the minor

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children than to pay for drug tests and drug assessments. Viewing the receipts for the gifts purchased, the court found that Father spent roughly \$385 on the children in the six months preceding the filing of the termination of parental rights petitions.

The court found that Father was an “able-bodied person capable of gainful employment and capable of paying a sum greater than zero toward the support of the children during the six months prior to the filing of th[e] Petition[s].” Father had welcomed a child with his girlfriend in 2020.<sup>2</sup> He had been able to support that child but “willfully chose not to support the minor children that are the subject of this action.”

The trial court found that Father “had ample opportunity to be present for his minor children but has made no efforts to do so”; he “ha[d] not inquired about the minor children’s health since August of 2018; and he “ha[d] not inquired as to how the minor children were doing in school since August of 2018.” Father “ha[d] not made any reasonable effort to maintain any bond with the minor children . . . since August of 2018.”

The trial court made the ultimate finding that Father neglected the minor children within the meaning of N.C. Gen. Stat. § 7B-101(15) and that there was a reasonable likelihood the neglect would continue if Father was granted custody of the minor children. The court also found that Father willfully abandoned the minor

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<sup>2</sup> Father’s child born in 2020 is not subject to the termination of parental rights action as to Annie, Eric, and Amy.

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children for at least six months immediately preceding the filing of the petitions. The court observed that each petition for termination of Father's parental rights alleged the ground to terminate parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) (abandonment for a period of six months) based on two different theories. However, the language used in asserting one theory mirrored language found under N.C. Gen. Stat. § 7B-1111(a)(1), neglect by abandonment.

In adjudication, the court concluded that Father "ha[d] willfully abandoned the minor children for a period exceeding six months preceding the filing of the petition, under [N.C. Gen. Stat.] § 7B-1111(a)(7). Furthermore, . . . Respondent Father has neglected the minor children by willful abandonment under the meaning of [N.C. Gen. Stat.] § 7B-111[1](a)(1)." In disposition, the court concluded that termination of Father's parental rights was in the best interests of each child. Accordingly, the trial court terminated Father's parental rights by order entered 5 January 2023. Father appeals.

**II. Issues**

Father argues that the trial court erred (A) by determining that he willfully abandoned his children as contemplated under N.C. Gen. Stat. § 7B-1111(a)(7) and (B) by terminating his parental rights pursuant to any ground other than N.C. Gen. Stat. § 7B-1111(a)(7).

**A. Abandonment Pursuant to N.C. Gen. Stat. § 7B-1111(a)(7)**

Father argues that the trial court's findings of fact do not support a conclusion

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that he willfully abandoned his minor children within the meaning of N.C. Gen. Stat. § 7B-1111(a)(7), where he submitted to a drug test in order to visit his children in compliance with the 25 October 2019 custody order and provided the children with numerous gifts within the six months preceding the filing of the petitions to terminate his parental rights. Father argues that because he paid \$175 for the drug test—not an insignificant amount to him—and spent \$385 on gifts for the minor children, “he did not eschew his parental responsibilities in their entirety.” He further contends that it is irrelevant that the paternal grandmother never informed Mother or the minor children that he paid for the gifts for the children. He argues that the pertinent question is “‘what did [he] do,’ not ‘what did the [Mother] know.’” We affirm the trial court’s order.

We review a trial court’s adjudication of grounds to terminate parental rights “to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings of fact support the conclusions of law.” *In re B.E.V.B.*, 381 N.C. 48, 50, 871 S.E.2d 700, 703 (2022) (citation omitted). “[W]e review only those findings necessary to support the trial court’s determination that grounds existed to terminate respondent’s parental rights.” *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58-59 (2019) (citation omitted). Unchallenged findings are “deemed supported by competent evidence and are binding on appeal.” *Id.* at 407, 831 S.E.2d at 58 (citations omitted). We review the conclusions of law de novo. *In re B.E.V.B.*, 381 N.C. at 48, 871 S.E.2d at 703.

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Section 7B-1111(a)(7) of our General Statutes authorizes a court to terminate parental rights where “[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) (2023). A court may consider the parent’s conduct outside of the six-month period to evaluate a parent’s credibility and intentions, but “the determinative period for adjudicating willful abandonment is the six consecutive months preceding the filing of the petition.” *In re D.E.M.*, 257 N.C. App. 618, 619, 810 S.E.2d 375, 378 (2018) (quotation marks and citation omitted).

“[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 E.H.P.*, 372 N.C. 388, 393, 831 S.E.2d 49, 52 (2019) (quotation marks and citations omitted); *see also Pratt v. Bishop*, 257 N.C. 486, 502, 126 S.E.2d 597, 608 (1962) (“Abandonment requires a wil[l]ful intent to escape parental responsibility and conduct in effectuation of such intent.”). “Wil[l]ful intent is an integral part of abandonment and this is a question of fact to be determined from the evidence.” *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (cleaned up). “If a parent withholds that parent’s presence, love, care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.” *In re B.E.V.B.*, 381 N.C. at 51, 871 S.E.2d at 703 (quotation marks and citation omitted); *see also In re B.C.B.*, 374 N.C. 32, 40, 839 S.E.2d 748, 754-55 (2020) (“[A] parent will not be excused from



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showing interest in a child's welfare by whatever means available, even if his options for showing affection were greatly limited." (cleaned up)); *see, e.g., In re L.M.M.*, 379 N.C. 431, 866 S.E.2d 453 (2021) (affirming conclusion of willful abandonment though parent sent one card and some presents during the relevant six-month period but made no other attempt to contact or reestablish a relationship with his daughter, did not inquire as to her well-being, did not provide financial support, did not seek to establish his visitation rights and made no other attempts to show love, care, or affection for his daughter); *In re J.L.K.*, 165 N.C. App. 311, 598 S.E.2d 387 (2004) (affirming conclusion of willful abandonment where the parent contacted the minor child in the relevant six-month period with two cards followed by one card sent after the petition was filed).

Father does not challenge the trial court's findings of fact, and it was undisputed that he had not seen Annie, Eric, or Amy in the six months preceding the filing of the petitions to terminate his parental rights on 15 November 2021 or any time since August 2018. Father points to his purchase of gifts for the children as evidence that "he did not eschew his parental responsibilities in their entirety." However, he agreed that the children should be kept unaware that the gifts were from him, thereby willfully withholding from Annie, Eric, and Amy knowledge of his affection. Moreover, it was unchallenged that Father is an able-bodied person capable of contributing more than zero toward the support of the minor children and that he willfully chose not to support Annie, Eric, and Amy. *See In re B.E.V.B.*, 381 N.C. at

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55, 871 S.E.2d at 706; *In re L.M.M.*, 379 N.C. at 440, 866 S.E.2d at 461; *In re J.L.K.*, 165 N.C. App. at 319, 598 S.E.2d at 392-93.

Though the court's 25 October 2019 custody order allowed Father to commence visitations with the children only after obtaining a substance abuse assessment, following the recommendations of said assessment, and producing a clean drug screen, the court found that Father made one attempt to comply before petitions to terminate his parental rights were filed. Father submitted to a drug test in October 2021, which yielded a positive result, and he admitted during the termination hearing held on 1 December 2022 that he would test positive for illegal substances. Though Father was unsuccessful at satisfying the criteria in the court's 25 October 2019 custody order for visitation, the order did not prevent him from contacting his children or inquiring about them. Nevertheless, Father had not contacted the children or inquired about them with Mother or the paternal grandmother in the six months preceding the filing of the petitions or even since August 2018. *See In re B.C.B.*, 374 N.C. at 40, 839 S.E.2d at 754-55 (“[A] parent will not be excused from showing interest in a child’s welfare by whatever means available, even if his options for showing affection were greatly limited.” (cleaned up)).

The trial court's unchallenged findings of fact support its determinations that “Father has abandoned the minor children into the care of the [Mother]”; “has not made any reasonable effort to be involved in the minor children’s educational needs, physical needs, medical needs, psychological needs or otherwise”; and “has willfully

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foregone all parental duties at least since August of 2018 and has not made a single attempt to visit or contact the children since that time.” *See In re B.E.V.B.*, 381 N.C. at 54, 871 S.E.2d at 705; *In re B.C.B.*, 374 N.C. at 40, 839 S.E.2d at 754-55. We affirm the trial court’s adjudication that grounds exist to terminate Father’s parental rights to Annie, Eric, and Amy pursuant to N.C. Gen. Stat. § 7B-1111(a)(7).

**III. Conclusion**

As an adjudication of a single ground under N.C. Gen. Stat. § 7B-1111(a) is sufficient to support a termination of parental rights, we uphold the trial court’s adjudication of grounds to terminate Father’s parental rights to Annie, Eric, and Amy pursuant to N.C. Gen. Stat. § 7B-1111(a)(7). We need not address Father’s challenge to alternative grounds for terminating his parental rights. *See In re E.H.P.*, 372 N.C. at 395, 831 S.E.2d at 53-54. Father does not challenge the trial court’s dispositional determination that termination of his parental rights is in the minor children’s best interests. *See* N.C. Gen. Stat. §§ 7B-1109, 1110 (2023) (describing a two-step process for termination of parental rights proceedings: an adjudication stage followed by a dispositional stage). Accordingly, we affirm the trial court’s 5 January 2023 order.

AFFIRMED.

Panel consisting of:

Judges MURPHY, COLLINS, and HAMPSON.

Report per Rule 30(e).