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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-958

Filed 2 April 2024

Carteret County, No. 21-JT-41

In re: S.M.V.

Appeal by Respondent-Appellant ("father") from an Order entered 28 July 2023 by Judge Debra L. Massie in Carteret County District Court. Heard in the Court of Appeals 5 March 2024.

No brief filed for petitioner-appellee mother.

Miller & Audino, LLP, by Attorney Jeffrey L. Miller, for the respondent-appellant father.

STADING, Judge.

Respondent-Appellant ("father") appeals the trial court's order finding grounds to terminate his parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(6) and (a)(7) (2023). For the reasons below, we affirm.

I. **Background**

Sally[1] was born in November 2014 on Harkers Island. Her parents lived with mother's grandmother until her father moved out around nine to eleven months after her birth when he relocated to his mother's residence in Havelock. Post-separation, the parents shared physical custody of Sally until father's 2016 arrest for a probation violation, leading to his extradition to Indiana. While incarcerated in Indiana, father corresponded with mother about Sally, while mother kept in contact with father's family and provided for Sally.

Eventually father returned and sought to resume the previous arrangement of shared custody. In response, mother initiated a lawsuit for child custody on 2 February 2017. A hearing was held on 29 March 2018 and an order awarding temporary custody to mother was entered on 23 July 2018. That order listed the address of Sally's residence and found that father "had not seen or visited with [Sally] or contributed anything [for Sally's] maintenance and support since about January of 2015. . . ." It also contained a finding that father was incarcerated in Carteret County awaiting trial on drug charges. Although incarcerated, the order concluded that father "may contact and visit with the minor child" and all visits will be supervised by mother. Additionally, the order concluded that father shall not use drugs "within twenty-four hours of visiting with [Sally] nor be under the influence of . . . drugs . . .

[1] "Sally" is a pseudonym to protect the minor child's identity. *See* N.C. R. App. P. 42.

during a visit" and permitted mother to request father to submit to a drug test. Father did not visit Sally after this order was entered.

Mother filed for the termination of father's parental rights on 22 June 2021. Father was served with the petition for termination of parental rights while detained in Craven County for a charge involving possession of a firearm by a felon. Father responded to the petition with a handwritten letter. On 1 July 2021, mother filed an amended petition without court approval and father's attorney moved to dismiss the petition with prejudice. After father's release from incarceration, before Thanksgiving 2021, he managed to find employment for several months but admitted that he continued using drugs, including "meth and marijuana."

The trial court held a hearing on 18 August 2022 and terminated father's parental rights based on both grounds asserted in the amended petition: incapability and dependency under N.C. Gen. Stat. § 7B-1111(a)(6) and willful abandonment under N.C. Gen. Stat. § 7B-1111(a)(7). Further, the trial court ruled the termination was in Sally's best interests. The trial court's decision, finalized on 28 July 2023, ordered the termination of father's parental rights to Sally after considering various factors, including his continued drug use and the stable environment provided by the mother. In its order, the trial court found that while father was no longer incarcerated, he was still homeless and "living with his 'old lady' (his girlfriend) who provides him with a cell phone and place to stay." The trial court also found that father failed to parent Sally due to his "history of criminal activity, including

substance abuse." Furthermore, the trial court found that Sally does not know father but does have a close relationship with mother. The trial court rejected father's assertion that he could not contact Sally, noting that mother and Sally resided at the same Harkers Island address and mother had the same cell phone number.

Based on its findings, the trial court held that father "has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of this Petition." The trial court further held that father "lacks the ability or willingness to establish a safe and stable home for either himself or for [ ] [Sally]." As a result, the trial court concluded that grounds exist to terminate father's parental rights under N.C. Gen. Stat. §§ 7B-1111(a)(6) and (7). The trial court further concluded that it was in Sally's best interests for father's rights to be terminated. Following entry of the trial court's order, Father timely appealed.

II. Jurisdiction

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

III. Analysis

On appeal, father raises the following issues: 1) whether the trial court lacked jurisdictional authority due to the initial petition missing its second page containing the asserted grounds for termination; 2) whether there was sufficient clear and convincing evidence to support the trial court's findings of fact, and those findings support the conclusions of law on the existence of the grounds for the termination of

parental rights; and 3) whether the trial court abused its discretion and erred in its findings of necessary factors required by N.C. Gen. Stat. § 7B-1110(a) (2023).

A. <u>The Amended Petition</u>

Father first contends that the trial court lacked jurisdiction because the amended petition was invalid. Mother filed the initial petition in Carteret County on 22 June 2021 and father was served in Craven County on the next day. Father then responded by a handwritten letter to mother's attorney, dated 24 June 2021, contesting the termination of his parental rights. Since the original filing omitted its second page, which listed the grounds for termination, mother filed an amended petition without leave of court on 1 July 2021. Father was served on 7 July 2021 and responded on 2 August 2021 by answering the amended petition and requesting an "Order dismissing the Petition . . . with prejudice." That amended petition contained the second page missing from the initial petition, which alleged the bases for terminating father's parental rights.

Father asserts that the trial court lacked jurisdictional authority because the initial petition failed to state "[f]acts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist." N.C. Gen. Stat. § 7B-1104(6). He also contends that this Court's holdings in *In re G.B.R.*, 220 N.C. App. 309, 725 S.E.2d 387 (2012) and *In re B.L.H.*, 190 N.C. App. 142, 660 S.E.2d

255 (2008) preclude the trial court from hearing the amended petition to terminate parental rights as a matter of law. We review questions of law under a *de novo* standard. *In re D.S.*, 364 N.C. 184, 187, 694 S.E.2d 758, 760 (2010).

In *In re B.L.H.*, at the termination hearing, the petitioner moved to amend the termination petitions to conform to the evidence to include another ground not raised in the original petition. 190 N.C. App. at 144, 660 S.E.2d at 256. This Court held that "[t]he only right of amendment permitted in Chapter 7B proceedings is for the amendment of a petition in juvenile, abuse, neglect or dependency proceedings, and this right is limited to when the amendment does not change the nature of the conditions upon which the petition is based." *Id.* at 146, 660 S.E.2d at 257 (internal quotation marks and citation omitted). In that case, this Court declined to "superimpose a right to amend a petition or motion for termination of parental rights to conform with the evidence presented at the adjudication hearing and the trial court erred by allowing the amendment." *Id.* at 146-47, 660 S.E.2d at 257 (citation omitted). Likewise, in *In re G.B.R.*, this Court applied *B.L.H.* and similarly concluded that the trial court erred as a matter of law in allowing the petitioner to amend the motions to terminate his parental rights to conform to the evidence presented at the termination hearing." 220 N.C. App. at 311, 725 S.E.2d at 389.

Here, we encounter a different scenario that does not implicate the same concerns. On 7 July 2021, father was served with the amended petition containing the facts underlying the stated grounds for termination. His attorney responded to

the petition by filing an answer on 2 August 2021. The hearing was held on 18 August 2022, more than a year after the petition was served and answered. "This Court has previously held that the Rules of Civil Procedure, while they are not to be ignored, are not superimposed upon these hearings." *In re L.O.K.*, 174 N.C. App. 426, 431, 621 S.E.2d 236, 240 (2005) (internal quotation marks and citations omitted). "Instead, the Rules of Civil Procedure apply only when they do not conflict with the Juvenile Code and only to the extent that the Rules advance the purposes of the legislature as expressed in the Juvenile Code." *Id.*

In light of the circumstances before us, to hold that an amendment of the petition deprived the trial court of jurisdiction, as father urges here, would be "contrary to the procedural mandate set forth in our juvenile code." *Id.* at 432, 621 S.E.2d at 240 (citation omitted). As for construction of this Article, the General Assembly stated as a matter of policy that "[a]ction which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict." N.C. Gen. Stat. § 7B-1100 (2023). Our Supreme Court has emphasized:

> While the stated policy of the Juvenile Code is to prevent the unnecessary or inappropriate separation of juveniles from their parents, . . . we note that the best interests of the juvenile are of paramount consideration by the court and . . . when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a *safe, permanent home within a reasonable amount of time*."

In re Z.L.W., 372 N.C. 432, 438, 831 S.E.2d 62, 66 (2019) (internal quotation marks and citations omitted). Father was served with the amended petition, secured legal counsel, and answered the petition long before the hearing. In this case, depriving the trial court of jurisdiction would conflict with the child's bests interests because there is no logical reason to elevate form over substance and further delay the proceedings. The child is entitled to a safe, permanent plan of care that cannot be foreclosed by father's efforts to extrapolate case law to create an overly technical stringency. *See In re L.O.K.*, 174 N.C. App. at 433, 621 S.E.2d at 241. We therefore hold that, under this set of circumstances, the trial court had jurisdiction and the amended petition was not invalid.

B. Willful Abandonment

A trial court may terminate parental rights upon a finding that "[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). "[T]hough 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 J.D.C.H.*, 375 N.C. 335, 338, 847 S.E.2d 868, 872 (2020).

"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. The word willful encompasses more than an intention to do a thing;

there must also be purpose and deliberation." *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986) (internal quotation marks and citations omitted). "Thus, termination based on abandonment requires findings that show more than a failure of the parent to live up to his or her obligations as a parent in an appropriate fashion." *In re D.M.O.*, 250 N.C. App. 570, 572–73, 794 S.E.2d 258, 861 (2016). The word "willful" encompasses more than a mere intention, but also purpose and deliberation. *In re Adoption of Searle*, 82 N.C. App. 273, 275, 346 S.E.2d 511, 514 (1986). "The willfulness of a parent's actions is a question of fact for the trial court." *In re K.N.K.*, 374 N.C. at 53, 839 S.E.2d at 738 (citing *Pratt*, 257 N.C. at 501, 126 S.E.2d at 608)). "The findings must clearly show that the parent's actions are wholly inconsistent with a desire to maintain custody of the child." *In re C.J.H.*, 240 N.C. App. at 503-04, 772 S.E.2d at 92.

Here, father contends that the evidence and the trial court's findings are insufficient to support his willful abandonment of Sally. Father specifically challenges that finding of fact no. 17 is incorrect as the evidence suggested he was incarcerated at the time of the termination hearing. Contrary to father's assertion, the term "orange" was colloquially used to refer to those times he was incarcerated. In fact, father stated more than once that he was "on the streets" or living with his girlfriend. Father also correctly notes that a portion of finding of fact no. 18 is a conclusion of law. *See In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted) (holding that "any determination requiring the exercise of

judgment or the application of legal principles is more properly classified as a conclusion of law," and that any determination found through "logical reasoning from the evidentiary facts" is classified as a finding of fact.). In any event, when the trial court mislabels "conclusions of law as findings of fact, findings of fact which are essentially conclusions of law will be treated as such on appeal." *In re J.O.D.*, 374 N.C. 797, 807, 844 S.E.2d 570, 578 (2020) (internal quotation marks and citation omitted). Thus, finding of fact no. 18(b), that father "willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing" of the termination petition, will be treated as a conclusion of law.

Next, father challenges every finding of fact listed under no. 19, urging a piecemeal analysis of each finding that disregards the collective body of the findings supporting the trial court's conclusion of law. He also expresses disagreement with the trial court's interpretation of the evidence or broadly disputes its relevance. And although there may be competing interpretations of the evidence, the trial court has the responsibility of making all reasonable inferences from the evidence presented. *In re N.P.*, 374 N.C. 61, 65, 839 S.E.2d 801, 804 (2020) (citation omitted); *see also In re Montgomery*, 311 N.C. 101, 110-11, 316 S.E.2d 246, 252-53 (1984) (citations omitted) ("Although the question of the *sufficiency* of the evidence to support the findings may be raised on appeal, . . . our appellate courts are bound by the trial courts' findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.").

In this case, the trial court's order contained several findings that sufficiently constituted grounds for termination of parental rights due to father's willful abandonment of Sally. *See* N.C. Gen. Stat. § 7B-1111(a)(7). Among the trial court's findings of fact underlying abandonment, father disputes the relevance of nos. 19(b), (c), and (d). Though outside the relevant six-month period, the trial court found that father was extradited to Indiana for a probation violation stemming from a burglary conviction. Then, after father served this sentence, he was again arrested in Indiana "for possession of marijuana[,]" and remained there to address this charge. *In re C.J.H.*, 240 N.C. App. 489, 503, 772 S.E.2d 82, 91 (2015) ("Although the trial court must examine the relevant six-month period in determining whether respondent abandoned the juvenile, the trial court may consider respondent's conduct outside this window in evaluating respondent's credibility and intentions."). And while "[i]ncarceration, standing alone, neither precludes nor requires a finding of willfulness on the issue of abandonment . . . a parent failing to have any contact can be found to have willfully abandoned the child." (citations and internal quotation marks omitted) (alterations in original). *Matter of D.M.O.*, 250 N.C. App. 570, 575, 794 S.E.2d 858, 862 (2016). In this context, findings of fact nos. 19(d), (e), and (g) bear significance, that father did not send anything to Sally while away, and upon his return to North Carolina (both before and during the relevant six-month window), father had not seen Sally since 2016—even when not incarcerated. However, even if faced with limited options, he did not pursue any of them. *See In re D.E.M.*, 254 N.C.

App. 401, 407–08, 802 S.E.2d 766, 771 (2017) (holding that "failure to even attempt to show affection for her child through her limited options was evidence that the child had been abandoned") (citations omitted).

Father also disputes the applicability of finding of fact no. 19(k) regarding the willfulness of his failure to provide financial support for Sally. While the trial court did not make findings addressing father's ability to provide financial support, this finding is among many showing an absence of financial or emotional support. *See In re McLemore*, 139 N.C. App. 426, 430, 533 S.E.2d 508, 510 (2000) ("Although the record here is also replete with evidence that respondent suffered from alcoholism, was incarcerated for some time, and had trouble maintaining steady employment, the court's findings here indicate that respondent provided no financial or emotional support during the relevant six months. . . . The findings indicate that during these six months, respondent made no contacts with his child, financial or otherwise. Indeed, he had made neither financial nor emotional contributions to the child since 1993—four years before the filing of this petition."). Thus, although this finding alone could be insufficient to support the trial court's conclusion of willful abandonment, it is among many other findings that adequately underlie this ground.

Father also disputes finding of fact no. 20 and maintains that his efforts to make contact and have the relationship were consistent with his abilities and were "in the face of obstruction interposed by his circumstances and [m]other's willful resistance and hostility." In support of his argument, father cites *In re D.T.H.*,

holding that "the trial court had the obligation to resolve a substantial factual dispute over the extent to which [the father] had had contact with [the child] and the extent to which the limited relationship that [the father] had been able to sustain with [the child] stemmed from interference by the maternal grandparents rather than from [the father's] action or inaction . . . ." 378 N.C. 576, 590, 862 S.E.2d 651, 661 (2021). Yet the trial court did resolve this matter in several findings of fact discussed above and in finding no. 19(a), concerning his "awareness" of Sally's residence. Here, father was aware of Sally's location but made no effort to send her cards, gifts, or support. Finding of fact no. 19(f) also resolves this dispute since the temporary custody order permitted father to visit with Sally. Even so, he did not exercise his rights under the temporary custody order. Moreover, as finding of fact no. 19(j) shows, father was not blocked from contacting mother since he did so by text message on Mother's Day in 2022, yet he did not inquire about Sally. *See In re A.G.D.*, 374 N.C. 317, 325, 841 S.E.2d 238, 243 (2020) (noting that the "respondent-father had the legal right and practical ability to contact the mother directly or through intermediaries for the purpose of inquiring about the children's welfare and asking that she convey his best wishes to them"). Father's argument fails since "the trial court's findings reflect a total failure on his part to take any action whatsoever to indicate that he had any interest in preserving his parental connection with" Sally. *Matter of A.G.D.*, 374 N.C. 317, 327, 841 S.E.2d 238, 244 (2020).

The trial court's findings of fact support its determination that grounds exist to terminate father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(7). *See Coble v. Coble*, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980) (stating that "[e]vidence must support findings; findings must support conclusions; conclusions must support the [order]" and that "[e]ach step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself"). Our thorough review reveals that the trial court's findings are supported by clear, cogent and convincing evidence, and the findings support the conclusions of law. *In re Montgomery*, 311 N.C. at 111, 316 S.E.2d at 253 (citation omitted). The findings clearly show that father's actions are "wholly inconsistent with a desire to maintain custody" of Sally. *In re C.J.H.*, 240 N.C. App. at 503-04, 772 S.E.2d at 92.

C. <u>Dependency and Incapability</u>

Since "an adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights," we need not address father's challenges to trial court's finding of grounds under N.C. Gen. Stat. § 7B-1111(a)(6). *Matter of E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019).

D. <u>Sally's Best Interests</u>

Father also contends that the trial court abused its discretion under N.C. Gen. Stat. § 7B-1110(a) by determining it was in Sally's best interests to terminate father's parental rights without citing the requisite factors. If the trial court finds grounds to terminate parental rights under N.C. Gen. Stat. § 7B-1111(a), it proceeds to the

dispositional stage where it must "determine whether terminating the parent's rights is in the juvenile's best interest" based on the following:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a).

The trial court's assessment of a juvenile's best interests at the dispositional stage is reviewed for abuse of discretion. *In re K.N.K.*, 374 N.C. 50, 56, 839 S.E.2d 735, 740 (2020); *In re L.M.T.*, 367 N.C. 165, 171, 752 S.E.2d 453, 457 (2013). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Dispositional findings not challenged by father are binding on appeal. *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019) (citation omitted). "It is clear that a trial court must consider all of the factors in section 7B-1110(a). . . . [t]he statute does not, however, explicitly require written findings as to each factor." *Matter of A.U.D.*, 373 N.C. 3, 10, 832 S.E.2d 698, 702 (2019). A trial "court is only required to make written findings

regarding those factors that are relevant." *Id.* (quoting *In re D.H.*, 232 N.C. App. 217, 221, 753 S.E.2d 732, 735 (2014)).

Here, the trial court made written findings regarding the relevant factors. For example, the trial court's order noted Sally's date of birth, and so her age is apparent from the order. The court also found that father has not seen Sally for about seven years, and he has no relationship with her. Although, the trial court found that Sally has "a very close relationship with her mother and is comfortable living in her present circumstances." The trial court stated that Sally "is in need of a permanent plan of care at the earlies possible age which can be obtained only by the termination of the parental rights of [ ] [father]." The trial court thus reasoned that "[i]t is in the best interests of [ ] [Sally] that the parental rights of [ ] [father] be terminated." In reaching that determination, the trial court held that it considered "the age of the juvenile, . . . the likely effect of terminating . . . father's parental rights along with other factors that would be helpful in accomplishing a permanent and safe environment and promoting the child's well-being." In that light, we are satisfied that the trial court made the relevant findings and did not abuse its discretion in reaching its conclusion that termination of father's parental rights was in Sally's best interest. *See Matter of Montgomery*, 311 N.C. at 109, 316 S.E.2d at 251 ("North Carolina's approach to controversies involving child . . . custody [is] . . . that the best interest of the child is the polar star.").

IV. <u>Conclusion</u>

For the reasons set forth above, we affirm the trial court's order terminating father's parental rights.

AFFIRMED.

Judges Hampson and Griffin concur.