

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-355

Filed 05 July 2023

Johnston County, Nos. 21 JA 39-43

IN THE MATTER OF: N.W., A.T., K.T., S.T., M.T.

Appeal by Respondent from orders entered 10 December 2021 by Judge Paul A. Holcombe, III, and 12 January 2022 by Judge Joy A. Jones in Johnston County District Court. Heard in the Court of Appeals 12 June 2023.

Holland & O'Connor, PLLC, by Jennifer O'Connor, for Petitioner-Appellee Johnston County Department of Social Services.

Administrative Office of the Courts, Guardian ad Litem Division, by Michelle FormyDuval Lynch, for Guardian ad Litem.

Robert W. Ewing for Respondent-Appellant Grandmother.

PER CURIAM.

Respondent, the maternal grandmother and legal guardian of the minor children N.W. (Nick), A.T. (Andy), K.T. (Kevin), S.T. (Sam), and M.T. (Mark),¹ appeals from the trial court's orders adjudicating the children as abused, neglected, and

¹ Pseudonyms are used to protect the childrens' privacy. See N.C. R. App. P. 42.

dependent juveniles. Because the trial court abused its discretion by allowing Respondent's appointed counsel to withdraw at the start of the adjudication hearing, we vacate the trial court's adjudication and disposition orders and remand for further proceedings.

I. Background

Respondent was granted guardianship of the children in Bronx County, New York Family Court on 15 January 2014. Respondent subsequently moved with the children to North Carolina.

The Johnston County Department of Social Services ("DSS") filed juvenile petitions on 30 March 2021 alleging that Andy, Kevin, and Sam were abused, neglected, and dependent juveniles, and that Nick and Mark were neglected and dependent juveniles. DSS obtained nonsecure custody of the children on that date.

The petitions alleged that on or about 16 March 2021, DSS received a Child Protective Services report alleging that Kevin and Sam obtained and smoked marijuana after locating it in an adult relative's home. During the social worker's investigation of the report, Respondent did not allow her to assess the home for safety and only allowed her to interview Kevin and Sam because they were involved in the report allegations. Respondent did allow the social worker to physically see the other children's faces as well as a portion of the home through a video call. Respondent did not sign a safety assessment but verbally agreed to ensure the children's safety and that they would not have access to illegal substances.

Opinion of the Court

The petitions further alleged that on 29 March 2021, DSS received a subsequent report alleging concerns of physical abuse and neglect. The report alleged that Respondent had hit the children with extension cords causing the children to sustain marks and bruises, made the children go several hours without food, and made the children sleep in the garage as punishment. The report also alleged the children were “depressed because incidents such as these have been happening for years.” The report additionally alleged that the children were being homeschooled but not receiving an education.

A hearing to determine the need for continued nonsecure custody was held on 31 March 2021; Respondent was present at the hearing. The trial court determined Respondent was entitled to court appointed counsel,² and confirmed the appointment of Respondent’s provisional attorney, Angela Narron. On 14 May 2021, Respondent wrote a letter to the court asserting there had been a breakdown in communication with Ms. Narron and requesting new counsel.

On 21 June 2021, DSS filed amended juvenile petitions to add the biological parents’ information. The petitions alleged that the mother indicated she was aware of the issues going on in Respondent’s home but had never reported them. Therefore,

² The form order indicates that Respondent is entitled to counsel as a party to a proceeding listed in N.C. Gen. Stat. § 7A-451(a)(12): “An indigent person is entitled to services of counsel in the following actions and proceedings: . . . (12) In the case of a juvenile alleged to be abused, neglected, or dependent under Subchapter I of Chapter 7B of the General Statutes.” N.C. Gen. Stat. § 7A-451(a)(12) (2022).

DSS had concerns with the mother being a caretaker for the children.

The adjudication hearing was continued numerous times due to service issues and the need to obtain more information regarding the New York case and the results from the children's medical examinations. In an order entered 19 August 2021, the New York court relinquished its jurisdiction to North Carolina.

Ms. Narron filed a motion to withdraw on 30 August 2021, indicating that Respondent had asked her to do so. The trial court allowed the motion to withdraw and appointed Allan DeLaine as Respondent's counsel on 1 September 2021.

The adjudication came on for hearing on 3 November 2021. Respondent was not present at the hearing. Mr. DeLaine made an oral motion to withdraw, stating that he had not had any contact with Respondent. The court orally granted the motion and conducted the adjudication hearing in Respondent's absence.

The trial court entered a written order on 3 December 2021 allowing counsel to withdraw. The trial court found that the only contact counsel had had with Respondent was "by email wherein there is no real communication necessary to representation" and that Respondent and the other parties would not be prejudiced by granting the motion to withdraw.

The trial court entered one order on 10 December 2021, adjudicating all five children abused, neglected, and dependent. In a separate disposition order entered 12 January 2022, the trial court continued the children's custody with DSS and denied Respondent visitation with the children. Respondent filed a notice of appeal

from both the adjudication and disposition orders.

II. Discussion

Respondent first argues that the trial court abused its discretion by granting her appointed counsel's motion to withdraw at the beginning of the adjudication hearing.

"It is well established that after making an appearance in a particular case, an attorney may not cease representing a client without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court." *In re M.G.*, 239 N.C. App. 77, 83, 767 S.E.2d 436, 440 (2015) (quotation marks, brackets and citation omitted); *see also* N.C. R. Prac. Super. & Dist. Ct. 16 ("Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court."). "The determination of counsel's motion to withdraw is within the discretion of the trial court, and thus we can reverse the trial court's decision only for abuse of discretion." *In re M.G.*, 239 N.C. App. at 83, 767 S.E.2d at 440 (quoting *Benton v. Mintz*, 97 N.C. App. 583, 587, 389 S.E.2d 410, 412 (1990)). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (quoting *In re N.G.*, 186 N.C. App. 1, 10-11, 650 S.E.2d 45, 51 (2007)). "However, this general rule presupposes that an attorney's withdrawal has been properly investigated and authorized by the court, so

Opinion of the Court

that, where an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion” to allow the motion. *In re K.M.W.*, 376 N.C. 195, 209, 851 S.E.2d 849, 860 (2020) (quotation marks, brackets, and citation omitted). “The [c]ourt must grant the party affected a reasonable continuance or deny the attorney’s motion for withdrawal.” *Williams & Michael, P.A. v. Kennamer*, 71 N.C. App. 215, 217, 321 S.E.2d 514, 516 (1984). “Under no circumstances may an attorney of record be permitted to withdraw on the day of trial without first satisfying the court that he has given his client *prior* notice which is both specific and reasonable.” *In re L.Z.S.*, 383 N.C. 309, 315, 881 S.E.2d 82, 87 (2022) (quoting *Williams & Michael, P.A.*, 71 N.C. App. at 216-17, 321 S.E.2d at 516).

Here, counsel for Respondent moved to withdraw at the start of the adjudication hearing. Respondent was not present at the hearing. Counsel stated that he had only had “minimal contact” with Respondent: “She called our office. I called her back. She didn’t pick up.” He later stated that he had had “no contact with [Respondent]. I haven’t spoken with her.” The following exchange occurred:

THE COURT: . . . And what sort of -- sort of efforts have you been able to make if -- on your behalf? Have you written her a letter or tried to call her or anything?

. . . .

[COUNSEL]: I’ve called her. I’ve email[ed] her.

THE COURT: Let me read this letter she wrote. All right. Do you believe that you have e-mailed her at this e-mail that she sent into the court, [redacted]?

. . . .

Opinion of the Court

[COUNSEL]: Yes, sir.

....

THE COURT: And [you] have not received a response?

[COUNSEL]: (Inaudible) contact. It went somewhere. But she didn't acknowledge it and I thought she would since it was a court (inaudible).

....

THE COURT: Okay. All right. [Counsel], I will go ahead and grant your request, sir.

The trial court then held the adjudication hearing in Respondent's absence.

The trial court entered a written order on 3 December 2021 granting counsel's motion to withdraw. The trial court found that the only contact counsel had had with Respondent was "by email wherein there is no real communication necessary to representation" and that "[t]here is no prejudice to Respondent-Mother or the other parties to this action with the grant of this motion."

Respondent argues the trial court abused its discretion in granting counsel's motion to withdraw when he failed to give Respondent prior notice of any intent to withdraw. We agree.

Counsel made an oral motion to withdraw at the start of the adjudication hearing when Respondent was not present at the hearing. Counsel gave no indication that he had given or even attempted to give Respondent notice of his intent to withdraw. Indeed, he informed the court that he had not had any contact with Respondent since he was appointed two months earlier. Where, as here, counsel did not provide, or attempt to provide, any prior notice to his client of his intent to

withdraw, the trial court had “no discretion” to allow the motion. *See In re K.M.W.*, 376 N.C. at 209, 851 S.E.2d at 860. Therefore, the trial court erred by allowing counsel’s oral motion to withdraw.

In an attempt to persuade us to reach a different result, DSS and the Guardian ad Litem (“GAL”) argue the instant case is analogous to *In re T.A.M.*, 378 N.C. 64, 859 S.E.2d 163 (2021), wherein our Supreme Court held, under the particular facts of that case, that the trial court did not abuse its discretion in allowing the respondent-father’s counsel’s second motion to withdraw. DSS and the GAL argue that, as in *In re T.A.M.*, the trial court in this case did not abuse its discretion in allowing counsel to withdraw where Respondent did not attend court hearings or maintain contact with counsel. We disagree.

In *In re T.A.M.*, the trial court advised the respondent-father on at least three separate occasions that, if he failed to attend all court hearings and maintain contact with his court-appointed attorney, the respondent-father’s “attorney ‘may ask and be permitted to withdraw as his attorney of record, and the case may proceed without him being represented by an attorney.’” *Id.* at 72, 74, 859 S.E.2d at 168, 169. On review, our Supreme Court held that, under the “unique circumstances” of that case, the trial court did not abuse its discretion by granting the respondent-father’s counsel’s second motion to withdraw, filed one week before the termination hearing, due to his repeated failure to maintain contact with appointed counsel over a span of nearly one year. *Id.* at 73-74, 859 S.E.2d at 169-170. The record showed that the

respondent-father “made no apparent effort to observe the trial court’s advisements to attend hearings, admitted he did not want to receive mail from DSS or other interested parties, and verbally consented to his attorney’s *withdrawal* as counsel.” *Id.* at 74, 859 S.E.2d at 170. In addition, the trial court confirmed with counsel that she had spoken with the respondent-father the morning of the hearing, and that counsel had advised the respondent-father that, if he did not attend the hearing, counsel would need to withdraw and the case would proceed in his absence. *Id.* at 73, 859 S.E.2d at 169.

This case is distinguishable from *In re T.A.M.* Here, there is nothing in the record to suggest Respondent had been advised of her responsibility to attend court hearings or maintain contact with counsel and that her failure to do so could result in the withdrawal of counsel. Counsel in this case made only an oral motion to withdraw at the start of the hearing, and there is no indication Respondent was given any notice of counsel’s intent to withdraw. Most notably, Respondent in this case did not consent to counsel’s withdrawal. Thus, Respondent was not provided the prior notice afforded to the respondent-father in *In re T.A.M.*

Additionally, Respondent’s conduct did not constitute “egregious” conduct to support a determination that counsel’s dismissal was warranted. *See In re K.M.W.*, 376 N.C. at 212-13, 851 S.E.2d at 862 (“Although [the] respondent-mother’s level of engagement with the proceedings before the trial court . . . was certainly less than exemplary, nothing in [the] respondent-mother’s conduct had the repeatedly

Opinion of the Court

disruptive effect necessary to constitute the ‘egregious’ conduct that is required to support a determination that [she] had forfeited her statutory right to counsel.” (citation omitted)). Although Respondent did not attend any court hearings after the initial appearance, she filed a letter requesting new counsel in May 2021 alleging a breakdown in communication, stating that Ms. Narron had been unresponsive to her emails and had not informed her of the rescheduled court hearing. Ms. Narron later filed a motion to withdraw on 30 August 2021, stating that it was at Respondent’s request, suggesting Respondent had some communication with counsel around that time. Mr. DeLaine was appointed on 1 September 2021, only two months before the adjudication hearing date, and Respondent made at least one attempt during that time to contact his office. Mr. DeLaine stated that he called Respondent once but she did not answer, and sent her one email but did not receive a response.

The GAL also argues that Respondent had no statutory right to appointed counsel under N.C. Gen. Stat. § 7B-602 because she is not the parent of the children, and therefore the trial court did not err by allowing counsel to withdraw. However, Rule 16 of the General Rules of Practice for the Superior and District Courts is not limited to appointed counsel or cases in which a party has a statutory right to counsel. *See* N.C. R. Prac. Super. & Dist. Ct. 16 (“Once a client has *employed* an attorney” (emphasis added)); *see also Smith v. Bryant*, 264 N.C. 208, 211-12, 141 S.E.2d 303, 306 (1965) (holding that the trial court erred by allowing the defendant’s employed counsel to withdraw at the time the case was called for trial because the record failed

Opinion of the Court

to show counsel gave the defendant adequate notice and that the defendant “had negatively and contumaciously failed to attend her case”). Once the court appointed Respondent counsel and counsel made an appearance in the matter, the trial court had no discretion to allow counsel to withdraw without providing Respondent with prior notice of his intent to withdraw.

Because the record in this case does not demonstrate Respondent had any prior notice of counsel’s motion to withdraw, the trial court erred by allowing counsel to withdraw. *See In re L.Z.S.*, 383 N.C. at 321, 881 S.E.2d at 90 (“[T]he trial court’s discretion to allow a respondent-parent’s counsel to withdraw from representation only comes into play when the parent has been provided adequate notice of counsel’s intent to seek leave of court to withdraw and the trial court has adequately inquired into the basis for counsel’s withdrawal motion.” (quotation marks, brackets, and citations omitted)); *see also Williams & Michael, P.A.*, 71 N.C. App. at 217, 321 S.E.2d at 516 (“The trial court clearly erred by permitting [counsel] to withdraw without first receiving [] assurances” that counsel had given his client prior notice.).

III. Conclusion

We reverse the trial court’s 3 December 2021 order allowing Respondent’s counsel to withdraw; vacate the trial court’s 10 December 2021 order adjudicating all five children abused, neglected, and dependent; and vacate the 12 January 2022 disposition order, and remand the case to the trial court for further proceedings. As a result, we need not address Respondent’s remaining arguments.

IN RE: N.W., A.T., K.T., S.T., M.T.

Opinion of the Court

REVERSED IN PART; VACATED IN PART AND REMANDED.

Before a panel consisting of Judges COLLINS, CARPENTER, and WOOD.

Report per Rule 30(e).