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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-13

Filed 16 July 2024

Guilford County, No. 21JT491

IN THE MATTER OF A.D.

Appeals by Mother and Father from order entered 21 September 2023 by Judge Brian K. Tomlin in Guilford County District Court. Heard in the Court of Appeals 29 May 2024.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for the appellant-respondent-mother.

Batch, Poore & Williams, PC, by Sydney J. Batch, for the appellant-respondent-father.

Mercedes O. Chut, Guilford County DHHS Attorney, for the appellee-petitioner.

Administrative Office of the Courts GAL Appellate Counsel by Kathleen Arundell Jackson for guardian ad litem, for the appellee-respondent.

TYSON, Judge.

Respondent-Appellants are the mother and father of the minor child A.D. (“Anna”). See N.C. R. App. P. 42(b) (pseudonyms used to protect the identity of minors). A termination of parental rights (“TPR”) hearing was held 8 August 2023.

Respondent-Mother (“Mother”) appeals denial of her motion to continue, and Respondent-Father (“Father”) appeals the granting of his counsel’s motion to withdraw from representation. We affirm the trial court’s rulings on both issues.

I. Background

Anna was born to Mother and Father in Johnson County, North Carolina, on 5 February 2021. Guilford County Department of Health and Human Services (“DHHS”) became involved with Anna and Mother on 12 March 2021. After several instances and reports of domestic violence between Mother and Father, DHHS filed a petition alleging Anna to be neglected and dependent and obtained an order placing her into the nonsecure custody of DHHS on 12 May 2021. The trial court adjudicated Anna to be neglected and dependent on 11 June 2021.

The petition for termination of parental rights was filed 11 January 2023. A pretrial hearing for the termination petition was scheduled for 18 April 2023, but was continued due to a court-ordered stay. The new date for the pretrial was set for 13 June 2023. A Permanency Planning Hearing was held on 7 June 2023. Both parents were present in court and represented by counsel. The newly scheduled pretrial hearing was called on 13 June 2023 but was again continued and rescheduled for 8 August 2023.

After being continued twice, the termination hearing was heard on 8 August 2023, almost eight months after the petition was originally filed. As of this hearing, neither parent had secured stable housing, made any significant progress with their

respective case plans, and had each accumulated several criminal charges. Mother had also been incarcerated since 4 April 2023.

The dissenting opinion asserts Father was unable to partake in the services recommended to him by DHHS for some time due to his status as a minor. Although Father was a minor at the time Anna was taken into DHHS's care, he remained a minor for approximately eight months following Anna's removal. Though he could not immediately participate in a case plan due to his original status as a minor, DHHS created a case plan for him at the same time Mother's case plan was created. Father was reluctant and intentionally refused to enter his case plan after reaching the age of majority. For example, Father joined a Child and Family Team ("CFT") and Permanency Planning Review ("PPR") call on 10 December 2021, at which point Father was now eighteen years of age.

The purpose of the meeting was to explain and compel Father into entering his case plan, to which Father responded by hanging up the phone. Another CFT/PPR hearing was held for the same purpose on 8 August 2022, but Father did not join. During the Permanency Planning Hearing held 23 November 2022, the trial court ordered Father to "enter into and comply with his case plan and cooperate with [DHHS] if he desires reunification [with Anna]." Father did not enter his case plan until two or three months prior to the final TPR hearing at issue.

II. Analysis

Both Mother and Father present different arguments on appeal, alleging the

trial court erred in the denial and granting of their respective motions.

A. Mother's Appeal

Respondent-Mother argues the trial court erred in denying her motion to continue the termination hearing on 8 August 2023. Mother was not present for this hearing, but she was represented by counsel.

“Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court’s ruling is not subject to review.” *State v. Walls*, 342 N.C. 1, 24, 463 S.E.2d 738, 748 (1995) (citing *State v. Searles*, 304 N.C. 149, 282 S.E.2d 430 (1981)). “However, if ‘a motion to continue is based on a constitutional right, then the motion presents a question of law which is fully reviewable on appeal.’” *State v. Jones*, 342 N.C. 523, 530–31, 467 S.E.2d 12, 17 (1996) (quoting *State v. Smith*, 310 N.C. 108, 112, 310 S.E.2d 320, 323 (1984)).

“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) (citations omitted). “Regardless of whether the motion raises a constitutional issue or not, a denial of a motion to continue is only grounds for a new trial when defendant shows both that the denial was erroneous, and that [s]he suffered prejudice as a result of the error.” *Walls*, 342 N.C. at 24–25, 463 S.E.2d at 748 (citing *State v. Branch*, 306 N.C. 101, 291 S.E.2d 653 (1982)).

This Court has held a parent’s absence from a termination hearing does not

itself arise to a violation of due process. *See In re C.M.P.*, 254 N.C. App. 647, 652, 803 S.E.2d 853, 857 (2017); *In re Murphy*, 105 N.C. App. 651, 656–58, 414 S.E.2d 396, 399–400 (1992) (holding a parent’s due process rights were not violated when the termination hearing was conducted in the parent’s absence), *aff’d per curiam*, 332 N.C. 663, 422 S.E.2d 577 (1992).

Mother did not assert a constitutional basis for a motion to continue and has waived any argument on appeal that the denial of her motion violated her constitutional rights. Absent a violation of constitutional rights, this Court reviews a denial of a motion to continue under an abuse of discretion standard.

The Juvenile Code provides “[c]ontinuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice[.]” N.C. Gen. Stat. § 7B–1109(b) (2023). “Continuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it.” *In re Humphrey*, 156 N.C. App. 533, 538, 577 S.E.2d 421, 425 (2003) (citations omitted).

As to Mother’s appeal, no showing supports the trial court abused its discretion in denying her motion to continue. Mother had received prior notice of the scheduled TPR hearing months in advance and was consistently reminded through her involvement in other custody hearings at the same court and through visits from DHHS representatives. Having offered no legitimate reason for being absent during the hearing, Mother failed to establish extraordinary circumstances under N.C. Gen

Stat. § 7B–1109(b). The trial court’s order regarding Respondent-Mother is affirmed.

B. Father’s Appeal

Respondent-Father argues the trial court erred by allowing his counsel to withdraw from representing him at the TPR hearing. “A trial court’s decision to grant or deny an attorney’s motion to withdraw is reviewed on appeal for an abuse of discretion.” *In re T.A.M.*, 378 N.C. 64, 71, 859 S.E.2d 163, 168 (2021).

N.C. Gen. Stat. § 7B–1101.1(a) requires parents to be represented by counsel during termination of parental rights actions, unless there is a showing the parent has forfeited or waived such right. N.C. Gen. Stat. § 7B–1101.1(a) (2023). Our Supreme Court has held a parent waives their right to representation when their actions rise to the level of “egregious dilatory or abusive conduct.” *In re K.M.W.*, 376 N.C. 195, 209, 851 S.E.2d 849, 860 (2020) (quoting *State v. Simpkins*, 373 N.C. 530, 541, 838 S.E.2d 439, 449 (2020)).

Additionally, after making an appearance before the court, an attorney may not abandon his or her client and case without “(1) justifiable cause, (2) reasonable notice [to the client], and (3) the permission of the court.” *Smith v. Bryant*, 264 N.C. 208, 211, 141 S.E.2d 303, 305 (1965). “Where an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion. The Court 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).

The dissenting opinion asserts Father's conduct did not rise to the level of "egregious dilatory or abusive" to find a waiver of his right to counsel during the TPR hearing. Additionally, the dissenting opinion claims the inquiry efforts made by the trial court into the notice given by Father's counsel were inadequate. However, such an assertion fails to apprehend the advancements in case law following *K.M.W.* and would result in an undue burden being placed on counsel and our trial courts.

Our Supreme Court in *T.A.M.*, a case decided after *K.M.W.*, properly acknowledged and explained:

A parent, by repeatedly failing to communicate with appointed counsel, by failing to attend numerous hearings, and by admittedly avoiding receiving mail and other communications from DSS and other interested parties, could successfully manipulate the judicial system to seriously delay the termination of parental rights proceeding. Under *K.M.W.*, the trial court would be required to halt a termination-of-parental-rights hearing, track down a parent, ensure the motion to withdraw was properly served and inquire into the efforts made by counsel to contact the parent, all before allowing counsel to withdraw from representation. And under these facts, trial courts would be obliged to re-appoint counsel for it all to begin again. These extensive and burdensome processes would impair judicial efficiency and drain already scarce judicial resources, while thwarting the over-arching North Carolina policy to find permanency for the juvenile at the earliest possible age.

T.A.M., 378 N.C. at 74–75, 859 S.E.2d at 170 (citations omitted).

Here, like the situation presented in *T.A.M.*, Father has failed to attend and participate in termination proceedings, refused to disclose his address to

DHHS, was reluctant to enter his case plan, has been unjustifiably difficult to communicate with, and made no notable progress in complying with his case plan. Thus, like the respondent in *T.A.M.*, Father has waived and forfeited his right to counsel.

Because Father waived his right to representation, the trial court did not need to conduct further inquiry regarding the prior notice given to Father by his appointed counsel. Further, an inquiry was not required because Father's counsel informed the court of the notice they provided.

Reversals and remands are reserved for when the attorney did not give their client prior notice of the hearing on the motion to withdraw, not solely because the trial court failed to make an inquiry. *See In re K.M.W.*, 376 N.C. at 210–11, 851 S.E.2d at 860–61 (holding the trial court did err in allowing respondent's attorney to withdraw where the trial court never determined the attorney gave the respondent notice of his intent to seek withdrawal).

In reviewing the record and transcript on appeal, no showing supports the trial court abused its discretion in granting counsel's motion to withdraw from representation. Father's counsel provided notice, had justifiable cause, e.g., Father's absences and lack of cooperation, and received permission from the court. Father's argument is without merit and the trial court's order regarding Respondent-Father is affirmed.

III. Conclusion

IN RE A.D.

Opinion of the Court

We hold the trial court did not abuse its discretion in denying Mother's motion to continue, nor granting Father's counsel's motion to withdraw from representation. The trial court's order and judgment is affirmed. *It is so ordered.*

AFFIRMED.

Judge CARPENTER concurs.

Judge MURPHY concurs in part and dissents in part.

Report per Rule 30(e).

No. COA24-13 – *In re A.D.*

MURPHY, Judge, concurring in result only in part and dissenting in part.

Mother and Father appeal from the trial court's order terminating their parental rights to Anna pursuant to N.C.G.S. § 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6), after a termination hearing was conducted in both parents' absence. The parents appeal individually based on different theories of error, and I analyze the merits of their arguments separately.

I concur in the Majority's result only as to Mother, and I dissent from the Majority's holding as to Father. For the reasons articulated below, I would affirm the trial court's order terminating Mother's parental rights under N.C.G.S. § 7B-1111(a)(6) and reverse the trial court's pre-trial termination order insofar as it allowed Father's counsel to withdraw; vacate the remainder of the pre-trial order as it pertains to Father; vacate the termination order insofar as it terminates Father's parental rights; and remand to the trial court for it to determine whether Father is entitled to appointed counsel, to appoint counsel if he is so entitled, and to reconstitute the pre-trial and termination hearings as to Father only after a valid waiver or exercise of his statutory right to counsel.

A. Background

I expand upon the factual circumstances of the case before us as relevant to my analysis.

At the time of Anna's birth, Mother and Father, respectively, were 20 and 17 years old. On 13 March 2021, DHHS received a report that Anna had tested positive for THC in a drug screen administered at birth due to lack of prenatal care. After initiating a case with Mother, a DHHS employee conducted a home visit, during which he witnessed paramedics transport Mother and Anna to the hospital for treatment of injuries that Mother reported were sustained during an assault by Father.

Shortly after this incident, DHHS held a Child and Family Team meeting, during which Mother, Father, Anna's paternal grandmother, and DHHS designated a temporary safety provider for Anna and agreed that both parents would participate in random drug screens, substance abuse assessments, and domestic violence prevention counseling. Afterwards, however, DHHS learned that Father was unable to participate in either domestic violence counseling or substance abuse services as a minor.

On 11 May 2021, DHHS employees witnessed a disturbance involving Mother at the home of Anna's temporary safety provider. In light of these events, DHHS determined that the home was no longer a safe placement for Anna; and, on 12 May 2021—after neither parent could provide alternative appropriate placement—DHHS

filed a juvenile petition alleging neglect and dependency and was granted nonsecure custody of Anna.¹

On 26 May 2021, the trial court continued DHHS’s custody of Anna. On 11 June 2021, the trial court conducted a hearing on the juvenile petition; and, on 18 August 2021, the trial court entered its order adjudicating Anna neglected and dependent. The trial court held a juvenile disposition hearing on 24 November 2021 and ordered that the primary permanent plan for Anna be reunification. This plan remained in place until 11 May 2022, when the trial court conducted a permanency planning hearing and ordered that the primary permanent plan be changed from reunification to adoption with a secondary concurrent plan of reunification. The trial court further ordered that DHHS proceed with filing a motion to terminate both parents’ rights within 60 days of the order’s entry, though no TPR motion “shall [] proceed with [t]rial until the completion of the next scheduled [p]ermanency [p]lanning [h]earing.” The trial court’s order was entered on 8 September 2022.

On 11 January 2023, DHHS filed a motion to terminate both Mother’s and Father’s parental rights, alleging that grounds for termination existed for both parents pursuant to N.C.G.S. § 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6). This motion was served on Father on 12 January 2023, and, after several unsuccessful service attempts, was served on Mother on 13 February 2023.

¹ As a minor, Father was appointed a Rule 17 guardian ad litem on the date of the petition’s filing.

On 26 January 2023, the trial court ordered that the TPR hearing “remain stayed” and that DHHS’s motion “can proceed through pre-trial but cannot proceed to trial.” On 28 April 2023, the pre-trial hearing and TPR hearing were scheduled to begin; however, the trial court reset the hearings for 13 June 2023.

During a permanency planning review hearing on 7 June 2023, DHHS requested that the trial court lift the stay placed on the TPR at the 11 May 2022 hearing. Both parents attended the hearing and asked that the trial court deny DHHS’s request; however, at the conclusion of the hearing, the trial court *rendered* an order lifting the stay.² The pre-trial and TPR hearings, which the trial court had scheduled before the stay was lifted, remained calendared for 13 June 2023.

On the 13 June 2023 pre-trial and TPR hearing date, approximately one week after the trial court orally lifted the stay on the TPR, the parties consented to a further continuance. Neither parent was present for the hearing, but both were represented by counsel. The trial court continued both hearings until 8 August 2023 but ordered that “further notice to the parties is not required.”³

On 8 August 2023, the trial court conducted the pre-trial and TPR hearings in the absence of both parents.

² The trial court’s *Permanency Planning Hearing Order* following its 7 June 2023 hearing bears a stamped filing date of 16 August 2023.

³ The trial court’s *Continuance Order* following its 13 June 2023 hearing bears a stamped filing date of 17 August 2023.

During the pre-trial hearing, Mother’s counsel moved on behalf of Mother for a 30-day continuance. In support of this motion, Mother’s counsel stated that Mother had “spent most of [the] year in jail” in another county and “was probably released . . . about a month [preceding the TPR hearing].” Following her release, Mother had appeared in Guilford County on 14 July 2023 for a hearing on a juvenile petition related to Anna’s younger sibling; however, on 2 August 2023, Mother’s counsel received notice that Mother had been arrested on new charges in late July and was currently incarcerated in Guilford County.⁴ Mother’s counsel intended to visit Mother at the jail on the Friday next preceding the Tuesday TPR hearing, but, at that time, Mother had been released from custody. He then attempted to contact her at her previous phone number, which had been disconnected. As such, Mother’s counsel had last made contact with Mother through a text message received on 17 July 2023. The trial court asked whether any party objected to Mother’s motion to continue and noted that the most recent filing regarding the scheduling of the TPR hearing was an order entered 28 April 2023, which continued the 18 April 2023 TPR hearing due to the stay placed on DHHS’s motion. DHHS’s counsel objected to Mother’s motion to continue and stated that a DHHS employee “went over [to the jail] last week after she realized [Mother] was in custody and . . . talked to her about the other [juvenile]

⁴ The record contains a 7 August 2023 *Criminal Record Search*, which indicates that Mother’s incarceration resulted from offenses alleged to have occurred on 29 July 2023.

MURPHY, J., concurring in result only in part and dissenting in part

case, but also told her about this case being on TPR for today.” After inquiring as to the expected length of the hearing, the trial court denied Mother’s motion and proceeded with the TPR.

After Mother’s counsel moved for a continuance, but before the trial court announced its ruling on that motion, Father’s counsel moved, and was permitted, to withdraw from representation without further inquiry:

[FATHER’S COUNSEL]: [] I would have a motion to withdraw based on notice to my client and his lack of presence.

THE COURT: Anybody want to be heard regarding [Father’s counsel’s] motion to withdraw?

[DHHS’S COUNSEL]: I do not object to [Father’s counsel’s] motion to withdraw, Your Honor.

[MOTHER’S COUNSEL]: I take no position.

THE COURT: All right. Motion allowed.

At the conclusion of the hearing, the trial court concluded that Mother’s and Father’s respective parental rights to Anna may be terminated pursuant to N.C.G.S. § 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6)—all of the grounds alleged in DHHS’s TPR motion—which provide the following:

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of [N.C.G.S. §]

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7B-101 or a neglected juvenile within the meaning of [N.C.G.S. §] 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. No parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

. . . .

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of [N.C.G.S. §] 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C.G.S. § 7B-1111(a)(1)-(3), (6) (2023). The trial court entered its *Pre-Trial Termination of Parental Rights Hearing Order* and *Order Terminating Parental Rights* on 21 September 2023. Mother and Father each appealed.

B. Termination of Mother’s Parental Rights

Mother presents a single overarching issue for our review: that the trial court abused its discretion in denying her motion to continue the termination of parental rights hearing (and therefore proceeding in her absence), and that this denial was prejudicial to her defense of the case. More specifically, Mother argues that she “was prejudiced in her defense” because

[t]he trial court found the existence of four grounds for termination asserted by DHHS: neglect, willfully leaving [Anna] in foster care for more than 12 months without making reasonable progress to correct the conditions that led to her removal, willfully failing to pay a portion of the cost of care, and incapability. Two of the grounds were not supported by the evidence at trial. For the remaining two, Mother’s testimony would have established a defense.

Mother states in her opening argument paragraph, without further specification, that “[t]wo of the grounds were not supported by the evidence at trial[]” and, “[f]or the remaining two, Mother’s testimony would have established a defense.” In substance, however, Mother’s brief challenges three grounds for termination—(a)(1), designated “neglect”; (a)(3), designated “support”; and (a)(6), designated “incapability”—as “not supported by the evidence at trial[]” and two grounds for termination—(a)(1), “neglect,” and (a)(2), designated “failure to make reasonable

progress”—under her abuse of discretion theory. *See generally In re J.E.*, 377 N.C. 285 (2021) (reviewing the parent’s continuance argument on appeal from termination order). Thus, although Mother only purports to challenge the termination order based on the trial court’s denial of her motion to continue, the substance of her “prejudice” argument presents and argues a second issue for our review: that the trial court erred *as a matter of law* in concluding that grounds for termination existed under N.C.G.S. § 7B-1111(a)(1), (a)(3), and (a)(6).

I agree with the Majority that our standard of review for the trial court’s order denying Mother’s motion to continue is abuse of discretion. However, given the issues presented and briefed, I would treat Mother’s argument on appeal as challenging the trial court’s termination under N.C.G.S. § 7B-1111(a)(3) and (a)(6) *only* as a matter of law; under (a)(2) *only* insofar as it abused its discretion in denying her motion to continue to the prejudice of her defense of this ground; and under (a)(1) *both* as a matter of law *and* insofar as it abused its discretion in denying her motion to continue to the prejudice of her defense of this ground. Mother does not argue that the trial court otherwise erred in concluding that grounds for termination existed under (a)(2), nor that the trial court’s denial of her motion to continue otherwise prejudiced her ability to present a defense to grounds for termination under (a)(3) or (a)(6), and these

arguments are deemed abandoned on appeal. N.C. R. App. P. 28 (2023) (“Issues not presented and discussed in a party’s brief are deemed abandoned.”).⁵

An adjudication of any single ground for terminating Mother’s parental rights to Anna under N.C.G.S. § 7B-1111(a) will suffice to support the trial court’s termination order:

The issue of whether a trial court’s findings of fact support its conclusions of law is reviewed de novo. However, an adjudication of any single ground for terminating a parent’s rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order. Therefore, if this Court upholds the trial court’s order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds.

⁵ As previously noted, the trial court’s order lifting the stay placed on DHHS’s TPR motion bears a filing date of 16 August 2023, eight days after the termination hearing. The trial court’s order continuing the termination hearing until 8 August 2023 bears a filing date of 17 August 2023, nine days after the hearing took place. Mother raises the issue of notice only in reference to her prejudice argument and abandons any other argument which may potentially arise from these filing dates. However, I find no merit in DHHS’s contention that—by her counsel’s failure to object to DHHS’s counsel’s assertion—Mother stipulated that she had received notice of the hearing from a DHHS employee at some time during the week before the termination hearing. “[B]efore ruling on a motion to continue the judge should hear the evidence pro and con, consider it judicially and then rule with a view to promoting substantial justice.” *State v. T.D.R.*, 347 N.C. 489, 504 (1998). “Statements by an attorney are not considered evidence,” *In re J.T.*, 252 N.C. App. 19, 21 (2017) (quoting *In re D.L.*, 166 N.C. App. 574, 582 (2004)), and, “[w]hile a stipulation need not follow any particular form,” and “[s]ilence, *under some circumstances*, may be deemed assent[,]” the terms of a stipulation “*must be definite and certain* in order to afford a basis for judicial decision, and it is *essential that they be assented to by the parties or those representing them.*” *State v. Crawford*, 179 N.C. App. 613, 620 (2006), *disc. rev. denied*, 361 N.C. 360 (2007) (quoting *State v. Alexander*, 359 N.C. 824, 828 (2005)) (emphasis added).

The trial court allowed all parties to be heard on the motion to continue, and *no* party offered any evidence regarding the motion. The trial court had broad discretion to consider all circumstances of the case and to rule on Mother’s motion to continue with a view to promoting substantial justice. However, DHHS’s counsel’s own, non-evidentiary statements could not, as DHHS contends, place a burden on Mother to disprove their veracity such that Mother’s counsel’s silence “assumed the character of stipulations.” See *In re E.P.-L.M.*, 272 N.C. App. 585, 607-08 (2020) (Murphy, J., concurring).

In re E.Q.B., 290 N.C. App. 51, 55 (2023) (quoting *In re J.S., C.S., D.R.S., D.S.*, 374 N.C. 811, 814-15 (2020)) (cleaned up). Here, the trial court terminated Mother’s parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), (a)(2), (a)(3), and (a)(6), and we may disturb the trial court’s termination order on appeal *only* if Mother demonstrates error in *each* of the four grounds for termination such that *no* ground remains sufficient to uphold the order. *See id.*; accord *In re J.S.*, 374 N.C. at 814-15.

1. Prejudice

“Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court’s ruling is not subject to review.” *In re A.L.S.*, 374 N.C. 515, 516-17 (2020) (quoting *Walls*, 342 N.C. at 24 (1995)). “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.” *Id.* at 517 (quoting *State v. Hennis*, 323 N.C. 279, 285 (1988)). Moreover, “a denial of a motion to continue is only grounds for a new trial when [the movant] shows both that the denial was erroneous, and that he suffered prejudice as a result of the error.” *Id.* (quoting *Walls*, 342 N.C. at 24-25). In the context of juvenile proceedings, our Supreme Court has articulated that,

[i]n general, to demonstrate prejudice resulting from the denial of a motion to continue an adjudicatory hearing, a respondent-parent should indicate what the parent’s “expected testimony” will address and “demonstrate its significance” to the trial court’s adjudication of the grounds for termination. *In re A.L.S.*, 374 N.C. at 518. The “better practice [is] to support a motion for continuance with” an

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“affidavit or other offer of proof.” *Id.* (citing and quoting *State v. Cody*, 135 N.C. App. 722, 726 (1999)).

In re C.A.B., 381 N.C. 105, 120 (2022).⁶

As noted above, Mother argues she was so prejudiced *only* in her defense of two of the four grounds for termination: N.C.G.S. § 7B-1111(a)(1) and (a)(2). Specifically, Mother argues that, if the continuance had been granted to allow her presence at the hearing, she would have testified as to changed circumstances significant to the trial court’s determination under (a)(1), and as to “her engagement in services in Bladen County, as well as her access to services during the several months that she was incarcerated[,]” significant to the trial court’s determination under (a)(2), all of which were not presented in her absence.

Mother does not argue that the trial court’s denial of her motion to continue prejudiced her ability to present a defense to grounds for termination under (a)(3) or (a)(6) because she does not argue that, if the trial court had granted her motion to continue, she would have presented any testimony or evidence in defense of these grounds. Therefore, even if Mother demonstrates on appeal that the trial court erred as a matter of law in terminating her parental rights pursuant to (a)(1), (a)(3) and (a)(6), to be entitled to a new trial on the remaining ground of (a)(2), Mother must

⁶ The parties disagree as to whether the trial court’s temporary stay of the TPR motion impacted timing under N.C.G.S. § 7B-1109(d) for the purposes of Mother’s motion to continue. As I do not reach Mother’s prejudice argument, I find it unnecessary to address DHHS’s contention that Mother waived her prejudice argument on appeal by her counsel’s failure to argue extraordinary circumstances justifying her motion to continue.

also show that the trial court's denial of her motion to continue, made in her absence on the date of the termination hearing, was not only so arbitrary as to constitute an abuse of its discretion, but was also prejudicial because it deprived her of the ability to provide specific testimony or another offer of proof that would be significant "to the trial court's adjudication of [that] ground[] for termination." *Id.*

Conversely, even assuming, *arguendo*, that the trial court abused its discretion in denying Mother's motion to continue, Mother makes no argument that this error would require a new trial on grounds for termination under (a)(3) or (a)(6). Therefore, if Mother's argument on the merits of *either* (a)(3) *or* (a)(6) fails, we need not consider any further prejudice to the proper ground and will uphold the termination order. *See In re C.A.B.*, 381 N.C. at 120 (mandating new trial on appeal from order denying motion to continue *only* when appellant demonstrates both error *and* prejudice); *see also In re E.Q.B.*, 290 N.C. App. at 59 (noting that, under our "single ground jurisprudence," a termination order may be upheld upon any one proper ground, and no further analysis is required for the purposes of appeal); *accord In re J.S.*, 374 N.C. at 814-15. Based on the reasoning below, I would hold that the trial court did not err in concluding that grounds existed to terminate Mother's parental rights to Anna pursuant to N.C.G.S. § 7B-1111(a)(6). Mother does not challenge the trial court's best interest determination, and I would affirm the trial court's order insofar as it terminates Mother's parental rights to Anna.

2. Termination Under N.C.G.S. § 7B-1111(a)(6)

We review the trial court’s conclusion that grounds for termination exist under N.C.G.S. § 7B-1111(a)(6) to determine “whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. The trial court’s conclusions of law are reviewable de novo on appeal.” *In re Z.A.M.*, 374 N.C. 88, 94 (2020) (citation and marks omitted). “Unchallenged findings of fact are deemed supported by the evidence and are binding on appeal.” *In re K.H.*, 281 N.C. App. 259, 266 (2022) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97 (1991)).

Mother argues that the trial court erred in terminating her parental rights under N.C.G.S. § 7B-1111(a)(6) because DHHS failed to prove by clear, cogent, and convincing evidence “that Mother was incapable of providing proper supervision and care to [Anna] at the time of the hearing, and that there was a reasonable probability that such incapability would continue for the foreseeable future[.]” Mother further contends that the trial court made no finding, and DHHS made no showing, that she had an “ongoing condition” which rendered her incapable of providing proper care or supervision to Anna. Specifically, Mother argues that “DHHS made no showing that Mother suffered from a substance abuse problem or mental health condition preventing her from parenting [Anna][.]” and the trial court “found only that [Mother and Father] had not presented any reasonable alternative placements for [Anna] and that they ‘have remained incarcerated during the time period that [Anna] has been in [DHHS] custody.’”

To demonstrate grounds for termination under N.C.G.S. § 7B-1111(a)(6), DHHS must show

that (1) the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of [N.C.G.S. §] 7B-101, and there is a reasonable probability that such incapability will continue for the foreseeable future, and (2) the parent lacks an appropriate alternative child care arrangement. Thus, the trial court's findings regarding this ground must address both (1) the parent's ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.

In re K.R.C., 374 N.C. 849, 859 (2020) (cleaned up). A dependent juvenile within the meaning of N.C.G.S. § 7B-101(9) is

[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

N.C.G.S. § 7B-101(9) (2023).

In addressing the availability of alternative child care arrangements, the trial court found as fact that Mother and Father “have not provided an appropriate alternative childcare arrangement for [Anna] and have not provided any relatives of the juvenile for placement that were approved.” The trial court further found that

[Anna] was first placed with a temporary safety provider with [her] paternal [great-]grandparents at the initial filing of the petition but that TSP was disrupted due to domestic violence between [Mother] and [Great-Grandmother]. [Father] provided names of a friend of the

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family and that home study was denied due to safety concerns regarding whether or not the friends could maintain and go by orders of the [c]ourt as it related to [Anna], they had extensive medical issues and could not provide documentation to [DHHS]. [Mother] also requested a home study on her previous foster parent and that request was denied due to housing conditions and not having a stable home. [Father] also requested a home study on [Grandmother] and that was denied due to previous CPS history and that [Father] was also residing with [Grandmother] at the time the home study was requested.

Mother does not challenge this finding, and it is deemed binding on appeal. This finding sufficiently establishes that Mother “lacks an appropriate alternative child care arrangement.” N.C.G.S. § 7B-1111(a)(6) (2023).

In addressing Mother’s ability to provide care or supervision for Anna, the trial court found that “[Mother] is unable to parent the juvenile at this time and is unable to meet her emotional, physical and well-being needs.” It further found “a reasonable probability that such incapability will continue for the foreseeable future, with incapability resulting from substance abuse, mental health, and any other cause or condition that renders [Mother] and [Father] unable or unavailable to parent [Anna]” Mother concedes that a DHHS employee “testified that, at the time of [the] hearing, Mother was unable to safely parent [Anna]” but argues that DHHS failed to provide any cause or condition for this present inability and “offered no evidence regarding any condition rendering Mother incapable of providing care in the future.”

While N.C.G.S. § 7B-1111(a)(6) provides that incapability “*may* be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile[,]” it does not limit DHHS’s showing of incapability to any *specific* “cause or condition.” N.C.G.S. § 7B-1111(a)(6) (2023) (emphasis added); *see In re L.R.S.*, 237 N.C. App. 16, 19-21 (2014) (rejecting argument that trial court must find the respondent-mother’s incapability was caused by a mental illness or physical disability and holding that “extended incarceration is clearly sufficient to constitute a condition that rendered her unable or unavailable to parent [the juvenile]”).

The conditions which led to Anna’s placement outside of the home included concerns of domestic violence, substance abuse, the parents’ lack of parenting skills, and the parents’ failure to address their own mental health needs. On 11 June 2021, Anna was adjudicated both neglected and dependent, and DHHS began offering the parents remedial services. In its termination order, the trial court made an unchallenged, binding finding of fact that, since the adjudication, Mother “has not shown sustained behavior changes.” Our appellate courts have consistently held that, where the facts are supported, a parent’s failure to address the conditions, behaviors, or other issues rendering her incapable of providing care and supervision for the juvenile may support the trial court’s conclusion of a reasonable probability that such condition, behavior, or other issue—and, therefore, incapability—will continue for the foreseeable future. *See In re A.H.*, 183 N.C. App. 609, 616 (2007)

(“The trial court was entitled to find, based on the three-year history of relapses, that there was a reasonable probability that the incapacity resulting from [the] respondent’s very serious substance abuse disorder would continue in the future.”), *In re H.N.D.*, 265 N.C. App. 10, 17-18 (2019) (holding that the mother’s “stated intent” to keep the father in her and her children’s lives, “in spite of the enduring pattern of violence [she] had suffered at [the father’s] hands[,]” was sufficient to support finding of present incapability and reasonable probability that such incapability would continue for the foreseeable future), *In re A.L.L.*, 254 N.C. App. 252, 266-67 (2017) (cleaned up) (holding that finding of dependency was supported where the mother failed to follow treatment recommendations after a psychological evaluation determined she was likely to continue placing herself and her children at risk of harm “[u]ntil she has better control over her depression and emotional neediness[]”); *see also In re K.Q.*, 381 N.C. 137, 146 (2022) (holding that finding of the father’s failure to accept responsibility for domestic violence leading to the juvenile’s removal, in spite of his engagement in treatment, supported the trial court’s conclusion that future neglect was likely for purposes of termination under (a)(1)).

Here, the trial court made numerous unchallenged, binding findings that concerns of domestic violence, substance abuse, the parents’ lack of parenting skills, and the parents’ failure to address their own mental health needs continued to exist at the time of the hearing and would likely continue to exist. These findings support the trial court’s conclusion that Mother was incapable of providing for Anna’s care or

supervision as of the date of the termination hearing and that there is a reasonable probability that this incapability will continue for the foreseeable future.

First, the trial court found that Mother “has not been able to maintain and obtain stable housing for a minimum of six consecutive months and has not provided [DHHS] with a copy of her lease[,]” “is known to bounce around from place to place, has been homeless and sometimes resides with friends[,]” “has lived in various abandoned townhomes in Guilford County[,]” “has also lived in a hotel and on the streets when not living in abandoned townhomes[,]” “continuously lacked the motivation and follow through on obtaining suitable housing[,]” even when financially able to do so and assisted in finding appropriate housing, and “has also been incarcerated at different times throughout this case.” Furthermore, the trial court found that Mother had recently been released from jail and had two felony and four misdemeanor charges pending against her. These unchallenged findings, at minimum, establish that Mother proved consistently unable or unwilling to provide stable housing for Anna and continued to engage in criminal activity.

Next, the trial court found that Mother failed to complete the Parenting Assessment Training Education program and to participate in outpatient therapy as recommended by her parenting psychological evaluator. These findings establish that Mother did not gain, and could therefore not utilize, parenting skills learned from either program. The trial court found that Mother completed a substance abuse and mental health assessment, which identified “[c]oncerns of substance use,

reactivity issues, trauma history and friction with service providers” and resulted in a recommendation of outpatient treatment with relapse prevention and a psychiatric evaluation to rule out PTSD and depression. The trial court found Mother did not follow these recommendations and continued to display concerning behaviors, including threatening to blow up a DHHS building while other visitations were occurring.

Furthermore, the trial court found that Mother “has not participated in a domestic violence assessment/program and has not followed through with the recommendations from that assessment[]”; did not complete the domestic violence program that she started; has not taken out any domestic violence orders of protection against Father, despite “[Father] assaulting [Mother] numerous times resulting in the police being called out or [Mother] being in the hospital”; and “most recently had to have oral surgery and reconstructive eye surgery due to the injuries from [Father].”

These unchallenged findings of fact support the trial court’s conclusion that, as of the date of the hearing, Mother was incapable of providing care or supervision to Anna due to “substance abuse[;] mental health[;] and any other cause or condition[,]” including the identified domestic violence concerns, housing concerns, and Mother’s continued criminal activity, which had most recently resulted in incarceration on charges with an alleged offense date of 29 July 2023, approximately one week before the termination hearing.

Furthermore, these findings establish that Mother had shown sustained unwillingness—and had in fact failed—to address the factors rendering her incapable of providing care or supervision to Anna. The trial court did not err in concluding that grounds existed to terminate Mother’s parental rights pursuant to N.C.G.S. § 7B-1111(a)(6), and we need not address Mother’s arguments on the remaining grounds. As Mother raises no further contention of error or prejudice with regard to grounds for termination under (a)(6), I would uphold the trial court’s order insofar as it terminates Mother’s parental rights.

C. Termination of Father’s Parental Rights

Father argues on appeal that the trial court abused its discretion in permitting Father’s counsel to withdraw from representation in his absence, leaving Father’s parental interests wholly unrepresented during the termination proceedings. On 8 August 2023, the trial court conducted both the pre-trial hearing and termination hearing on DHHS’s motion to terminate Father’s parental rights. Father was not present for these hearings. During the pre-trial hearing immediately preceding the termination hearing, Father’s counsel stated, “I would have a motion to withdraw based on notice to my client and his lack of presence.” The trial court inquired whether any other party “want[ed] to be heard regarding [Father’s counsel’s] motion to withdraw[.]” In response, DHHS’s counsel stated, “I do not object to [Father’s counsel’s] motion to withdraw,” and Mother’s counsel stated, “I take no position.” Without any further inquiry into the reason for Father’s counsel’s withdrawal or the

sufficiency of notice given to Father that his counsel would withdraw, the trial court ruled, “All right. Motion allowed.” As a result, the remainder of the pre-trial hearing and the entirety of the termination hearing were conducted in Father’s absence and without any representation of his parental interests.

Our Supreme Court has emphasized the importance of “the established right of a parent to be represented by legal counsel in proceedings in which a child of the parent is in the nonsecure custody of a county’s department of social services.” *In re L.Z.S.*, 383 N.C. 309, 315 (2022). Father argues that, in his absence, “it was incumbent on the trial court to ensure” this right was protected. *See In re S.N.W.*, 204 N.C. App. 556, 557-59 (2010) (holding that, where the father was not present during the termination hearing and the father’s counsel’s only contact with him was “one phone message” which counsel “tried to return[,]” “the trial court should have inquired further about” counsel’s efforts to contact the respondent father, protect his rights, and ably represent him before proceeding with the termination hearing). In response, DHHS argues that “Father’s failure to appear prevented the trial court from determining if Father wanted to waive his right to counsel[,]” and, therefore, “Father implicitly forfeited or waived his right to counsel by his complete lack of participation in the termination case.”

1. Waiver by Misconduct

Our Supreme Court has held:

MURPHY, J., concurring in result only in part and dissenting in part

In a termination of parental rights case, N.C.G.S. § 7B-1101.1(a) guarantees that “[t]he parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right.” N.C.G.S. § 7B-1101.1(a) [(2023)]. As to waiver of counsel by parents in cases in which the outcomes of permanency planning review hearings may result in termination of parental rights proceedings, this Court has adopted the standard that “[a] finding that a defendant has forfeited the right to counsel’ has been restricted to situations involving ‘egregious dilatory or abusive conduct on the part of the [litigant].’” *In re K.M.W.*, 376 N.C. 195, 209 (2020) (alterations in original) (quoting *State v. Simpkins*, 373 N.C. 530, 541 (2020)).

In re L.Z.S., 383 N.C. at 315.

In *L.Z.S.*, the father whose rights were subject to termination engaged with DSS while incarcerated, but, upon his release, “his contact with the trial court and DSS was sparse and ineffectual.” *Id.* at 312. The father did not contact DSS to provide his address upon release, and, when DSS was able to reach him, he refused to provide an address. *Id.* DSS attempted to contact the father several times throughout the following month and utilized the mother’s social media account to contact the father with the date of an upcoming child and family team meeting. *Id.* For a period of three months, the father communicated with DSS sporadically though always failed to provide his address. *Id.* After those three months, the father participated in a child and family team meeting by phone call but, during a subsequent phone call, the father expressed that he felt disrespected by DSS and disconnected the call. *Id.* Soon after, the father failed to appear for a permanency

planning review hearing. *Id.* at 313. Two months later, at the next scheduled permanency planning review hearing, the father again failed to appear, and his counsel filed a written motion to withdraw. *Id.* The trial court granted this motion and entered its order eliminating reunification as the primary permanent plan. *Id.* Our Supreme Court noted that “[t]he record [did] not indicate that [the] respondent-father was served with notice that his court-appointed counsel was withdrawing from the case or that there was any attempt to serve [the] respondent-father with such notice.” *Id.*

In the following months, the father was served twice with a letter informing him of the trial court’s decision to cease reunification efforts. *Id.* at 313-14. DSS was also able to reach the father via telephone on two occasions, although the father became upset and disconnected each of these calls. *Id.* at 314. Around two months after the father was served with notice that the trial court ceased reunification efforts, DSS filed a petition to terminate the father’s parental rights. *Id.* The trial court appointed the same counsel who had earlier withdrawn from representing the father to represent his interests in the termination of parental rights matter. *Id.* The father attended both the adjudication and the disposition termination hearings with his counsel. *Id.* Ultimately, the trial court terminated the father’s parental rights, and the father appealed. *Id.*

In considering the father’s challenge to the trial court’s order allowing his counsel to withdraw at the permanency planning hearing, thereafter conducting the

hearing that resulted in ceasing reunification efforts without any representation of the father's interests, our Supreme Court compared the factual circumstances of *L.Z.S.* to those of its earlier case, *K.M.W.*, and ultimately held the following:

In the present case, just as in *In re K.M.W.*, [the] respondent-father had the statutory right to counsel in this matter which resulted from his juvenile son Leon being taken into the nonsecure custody of DSS due to the trial court's determination of the child's status as a neglected juvenile and remained throughout the trial court's administration of permanency planning review hearings and the eventual termination of parental rights hearing. Since [the] respondent-father refrained from maintaining consistent communication with DSS and with his court-appointed counsel in a manner similar to the respondent-mother's failure to stay in contact with her counsel in *In re K.M.W.*, [the] respondent-father's conduct in this regard cannot be deemed to be so egregious, dilatory, or abusive here so as to constitute a waiver or forfeiture of counsel in light of the determination that the respondent-mother's inconsistent interaction with her counsel in *In re K.M.W.* did not rise to such a level.

Id. at 317-18.

Here, Father was himself a minor at the time that Anna first came into care. Father was unable for some period of time to engage in either of the services recommended by DHHS due to his age. As the trial court found, Father entered into a case plan relating to Anna with DHHS within the two or three months immediately preceding the termination hearing. Although Father's engagement with the trial court and DHHS was sporadic, Father appeared for the permanency planning

hearing next preceding the termination hearing and asked that the trial court deny lifting the stay on DHHS's TPR motion.

In the instant case, and as is consistent with our Supreme Court's application of the legal standard for waiver to the specific factual circumstances of the parents' conduct in both *L.Z.S.* and its predecessor, *K.M.W.*, Father's conduct falls far short of the sort of "egregious, dilatory, or abusive" conduct required to constitute a waiver of his otherwise-guaranteed statutory right to representation at the hearing on DHHS's motion to terminate his parental rights to Anna. *See id.* at 317; N.C.G.S. § 7B-1101.1(a) (2023).

2. Motion to Withdraw

Although Father did not waive his right to counsel through his own misconduct, we must determine whether the trial court could nevertheless permit Father's attorney to withdraw from representation on the date of the termination hearing as contemplated by Rule 16.

The trial court entered a *Pre-Trial Termination of Parental Rights Hearing Order* stating, in pertinent part,

[a]t the onset of this hearing, [Father's counsel] made a [m]otion to [w]ithdraw in this matter due to lack of sufficient contact with her client.

. . . .

THEREFORE, with the consent and agreement of all parties, IT IS ORDERED that:

MURPHY, J., concurring in result only in part and dissenting in part

A hearing to terminate the parental rights of [Mother] and [F]ather shall be heard on this date; [Father's counsel's] [m]otion to [w]ithdraw is granted due to lack of sufficient contact with her client; . . . and further notice to the parties present on this date is not required.

“Rule 16 of the General Rules of Practice prohibits an attorney from withdrawing from his or her representation of a client in the absence of (1) justifiable cause, (2) *reasonable notice to the client*, and (3) the permission of the court.” *Id.* at 315 (emphasis in original) (marks omitted). Therefore, before the trial court may grant an attorney’s motion to withdraw, it must “properly investigate[]” whether the attorney’s motion is grounded in a “justifiable cause” and whether that attorney has fulfilled her duty of providing her client with reasonable notice of her intent to withdraw.⁷ *Id.* “[W]here an attorney has given [her] client no prior notice of an intent to withdraw, the trial judge *has no discretion* to allow withdrawal.” *Id.* (emphasis added). Furthermore, “[u]nder no circumstances may an attorney of record be permitted to withdraw on the day of trial without first satisfying the [trial] court that

⁷ DHHS contends that “*In re L.Z.S.* expanded on *In re K.M.W.* and appeared to recognize that Rule 16 required an inquiry, and not simply to determine if the client received prior notice of the attorney’s intent to withdraw[]” but argues that “*In re K.M.W.* did not hold that Rule 16 required an inquiry, and neither did any other case located by the undersigned.” Although the veracity of this contention would have no impact on applying the standard articulated in *In re L.Z.S.* to the instant case, I note that our Supreme Court explicitly recognized in *In re K.M.W.* that, “before allowing an attorney to withdraw or relieving an attorney from any obligation to actively participate in a termination of parental rights proceeding when the parent is absent from a hearing, *the trial court must inquire* into the efforts made by counsel to contact the parent in order to ensure that the parent’s rights are adequately protected.” *In re K.M.W.*, 376 N.C. at 210 (emphasis added) (quoting *In re D.E.G.*, 228 N.C. App. 381, 386-87 (2013)). Our Supreme Court then concluded, “*given the very limited inquiry* that the trial court undertook before allowing [the mother’s counsel’s] withdrawal motion, . . . that the trial court erred by allowing that motion.” *Id.* at 211.

[she] has given [her] client *prior* notice which is *both specific and reasonable*.” *Id.* (first emphasis in original). As Father did not waive his statutory right to representation at the termination hearing either explicitly or by misconduct, the trial court was required to “properly investigate[]” whether Father’s counsel provided Father with “*prior* notice” of her intent to withdraw “which [was] both *specific and reasonable*[]” before it could exercise discretion in allowing his counsel’s withdrawal. *Id.* (first emphasis in original).

During the pre-trial hearing immediately preceding the termination hearing on 8 August 2023, DHHS’s counsel argued that Mother and Father’s counsel were provisional and should be released. Father’s counsel disagreed but made a separate motion to withdraw from representation:

[FATHER’S COUNSEL]: Your Honor, if I may. I would [. . .] disagree with that assessment. I believe that I’m confirmed based on confirmation in the underlying. However, I would have a motion to withdraw based on notice to my client and his lack of presence.

THE COURT: Anybody want to be heard regarding [Father’s counsel’s] motion to withdraw?

[DHHS’S COUNSEL]: I do not object to [Father’s counsel’s] motion to withdraw, Your Honor.

[MOTHER’S COUNSEL]: I take no position.

THE COURT: All right. Motion allowed.

The trial court then returned to its inquiry into Mother’s earlier motion to continue.

Before a trial court may exercise discretion over an attorney's motion to withdraw, it must ensure that the client has received both *specific* and *reasonable* prior notice of such withdrawal. *Id.* After concluding in *L.Z.S.* that the father's conduct was not so egregious, dilatory, or abusive as to constitute a waiver of his right to counsel, our Supreme Court proceeded to analyze not only whether the trial court *abused* its discretion in permitting the father's counsel to withdraw from representation at the permanency planning hearing, but whether the trial court *had* any discretion to exercise in the first instance. *Id.* at 317-18. Our Supreme Court held that the trial court had *no* discretion to allow the father's counsel's motion to withdraw because the father

was not apprised in advance by his counsel that the attorney would pursue withdrawal from the case on the day of the 13 August 2020 permanency planning review hearing and the record is bereft of any such notice to [the] respondent-father. In both *In re K.M.W.* and the case at bar, the trial court allowed the motion to withdraw of the parent's attorney, without prior notice to the parent being apparent from the trial record, on the same day of the hearing during which the attorney's motion to withdraw was formally considered by the trial court, in the absence of the affected parent who had a statutory right to counsel at the hearing at which the motion to withdraw was allowed and without further inquiry by the trial court appearing in the record. This confluence of salient circumstances between the two cases mandates reversal here.

Id. at 318.

In so holding, our Supreme Court “stresse[d] . . . that such cases as these are fact-specific and hence dependent on the unique facts of any given case.” *Id.* at 321. Our Supreme Court made careful distinction between the factual circumstances underlying its holdings in *L.Z.S.* and *K.M.W.*, where the trial court had no discretion to allow the attorneys’ withdrawal, and its holding in *In re T.A.M.*, 378 N.C. 64 (2021)—relied upon by the Majority—where the trial court had, and did not abuse, its discretion in allowing the attorney’s withdrawal:

In determining that the trial court did not abuse its discretion in *In re T.A.M.* to grant the motion to withdraw of the respondent-father’s counsel—as opposed to the trial court’s presumed exercise of discretion in the present case which it did not possess pursuant to *In re K.M.W.*—we emphasized the following indications of notice to the respondent-father which were given to the parent in *In re T.A.M.* regarding the potential withdrawal of counsel from representation which do not exist regarding the potential withdrawal of counsel from representation of [the] respondent-father here:

The trial court first advised [the] respondent-father of his responsibility to attend all trial court hearings and maintain communication with his court appointed attorney at the first appearance hearing on DSS’s juvenile petition of neglect for Tam held on 11 October 2016. Furthermore, the trial court advised [the] respondent-father that if he failed to attend trial court hearings or failed to maintain communication with his attorney, his 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.

The trial court advised [the] respondent-father for a third time that it was his responsibility to maintain

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contact with his appointed attorney and to attend all trial court hearings and that if he failed to communicate or attend all trial court hearings, his 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.

Counsel for [the] respondent-father informed the trial court that she had spoken to [the] respondent-father that day of the 30 January 2020 session of the termination of parental rights hearing and informed [the] respondent-father that if he did not appear at the termination-of-parental-rights hearing, she would need to withdraw and the case would proceed in his absence. The attorney also stated that [the] respondent-father did not object to his attorney's withdrawal as counsel. The trial court then granted [the] respondent-father's attorney's motion to withdraw.

We summarized these circumstances in which the respondent-father in *In re T.A.M.* was given notice that his counsel might be allowed to withdraw from representation in the event that the respondent-father failed to remain in communication with his attorney throughout the proceedings as we recounted that the trial court advised [the] respondent-father on three separate occasions that it was his responsibility to maintain contact with his attorney and attend all trial court hearings. In addition to the trial court's efforts in conveying notice to the respondent-father in *In re T.A.M.* about the prospects of the withdrawal of the parent's counsel from representation, the respondent-father's attorney also reinforced the potential of counsel's withdrawal with notice being given to the respondent-father that this could occur if the respondent-father failed to heed the trial court's admonitions on this subject. In further drawing the stark distinctions between the procedural facts of *In re T.A.M.* and the present case with regard to the withdrawal-of-counsel issue, it is particularly noteworthy that in *In re T.A.M.*, the respondent-father's attorney spoke with the

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respondent-father on the day of the termination hearing prior to the beginning of the hearing and directly informed the parent that counsel would need to withdraw from the case and the termination hearing would occur in the absence of the respondent-father if the respondent-father was not present for it.

In re L.Z.S., 383 N.C. at 319-21 (quoting *In re T.A.M.*, 378 N.C. at 71-73) (cleaned up).

Our Supreme Court then noted that,

[o]n the other hand, [the] respondent-father's court-appointed attorney in [*In re L.Z.S.*—as well as the privately retained attorney for the respondent-mother in *In re K.M.W.*—did not provide prior notice to the parent who had a statutory right to counsel that the attorney would seek to withdraw from representation at the hearing at which the parent had the statutory right to counsel.

....

Completely absent from the record in the present case is any indication of notice to [the] respondent-father from his counsel that the attorney was seeking to withdraw, any indication on the part of [the] respondent-father's counsel that reasonable efforts were made by the attorney to provide notice of counsel's intention to withdraw, or any inquiry conducted by the trial court regarding the basis for the motion to withdraw of [the] respondent-father's counsel.

Id. at 321.

Ultimately, our Supreme Court held that the father in *L.Z.S.* was entitled to a reversal of the trial court's order allowing his counsel to withdraw and a reconstitution of the permanency planning hearing conducted in his absence and without any representation of his parental interests immediately after the trial court

erroneously permitted his counsel to withdraw. *Id.* It emphasized that, despite the “differing outcomes” of *In re K.M.W.*, *In re T.A.M.*, and *In re L.Z.S.* “as a result of the varying facts which are singular to each case,”

the principle which is consistently implemented in, and commonly shown by, all of them is that the 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.

Id.

The Majority holds that “no showing supports [Father’s argument that] the trial court abused its discretion” in permitting Father’s counsel to withdraw on the day of the termination hearing, as “Father’s counsel provided notice, had justifiable cause, e.g., Father’s absences and lack of cooperation, and received permission from the [trial] court.” *Majority* at 8. However, the trial court made no inquiry into the sufficiency of notice or justifiable cause, and there is no evidence to support that Father’s counsel had given Father the specific, reasonable notice required under Rule 16. *In re L.Z.S.*, 383 N.C. at 315. The only statement which could potentially be interpreted to mean that Father was given any notice of his counsel’s intent to withdraw or that Father’s counsel had any reasonable basis for such withdrawal is counsel’s own, nonspecific statement that her motion was “based on notice to my client and his lack of presence.” Furthermore, the trial court found in its written

order that Father's counsel's motion to withdraw was "due to lack of sufficient contact with [Father]." The transcript reveals that Father's counsel made no statement to support this finding.

Pursuant to Rule 16 and "the principle which is consistently implemented in" *In re K.M.W.*, *In re T.A.M.*, and *In re L.Z.S.*, the trial court *had no discretion* to allow Father's counsel to withdraw on the date of the termination hearing without any inquiry into the adequacy of counsel's notice to Father, including, but not limited to, the means, extent, or timing of said notice. Therefore, reviewing the trial court's order allowing Father's motion to withdraw under an abuse of discretion standard is improper. In Father's absence, the trial court had a duty to ensure that Father's statutory right to counsel was protected, unless and until he waived that right. *Id.* The trial court could "under no circumstances" permit Father's counsel "to withdraw on the day of trial without first" being satisfied that Father's counsel gave Father specific and reasonable prior notice. *Id.*

I would hold that the trial court erred in permitting Father's counsel to withdraw on the day of the pre-trial and TPR hearings and reverse its *Pre-Trial Termination of Parental Rights Hearing Order* insofar as it allowed said withdrawal. Furthermore, as the record indicates that Father's counsel was permitted to withdraw from representation at the onset of the pre-trial hearing, I would vacate the remainder of the pre-trial order as it pertains to Father. As consistent with our Supreme Court's mandate in *L.Z.S.*, I would vacate the termination order insofar as

it terminates Father’s parental rights to Anna “and remand the case to the trial court for further proceedings not inconsistent with this opinion[]” where, “[u]pon remand, the trial court is to determine [Father’s] eligibility for court-appointed counsel, appoint counsel for [Father] if the parent is entitled to court-appointed counsel[]” and, “after [Father’s] exercise or waiver of his statutory right to counsel,” reconstitute the pre-trial and termination hearings originally conducted on 8 August 2023. *Id.* at 322.

D. Conclusion

Upon my review of the record, and for the foregoing reasons, I concur in the result reached by the Majority as to Mother. However, I would hold that the trial court properly concluded that it may terminate Mother’s parental rights pursuant to N.C.G.S. § 7B-1111(a)(6); and, as Mother does not argue any prejudice to her defense of this ground on appeal, I would affirm the order terminating Mother’s parental rights on the supported ground.

I respectfully dissent as to Father. The record contains no indication that Father waived his statutory right to representation during the pre-trial and termination hearings. The trial court had no discretion to permit Father’s counsel to withdraw from representation on the date of the termination hearing and in his absence without first ensuring that Father had reasonable and specific notice of his counsel’s intent to withdraw; and I would reverse the order allowing Father’s counsel to withdraw, vacate the termination order as to Father, vacate the remainder of the pre-trial order as to Father, and remand to the trial court to reconstitute the pre-trial

IN RE: A.D.

MURPHY, J., concurring in result only in part and dissenting in part

and termination hearings upon Father's valid waiver or exercise of his statutory right to counsel.