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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-705

Filed 19 March 2025

Surry County, No. 23 JA 56

IN THE MATTER OF:

E.B.

A Minor Child

Appeal by respondent-mother from a permanency planning order entered 23 May 2024 by Judge Gretchen Kirkman in Surry County District Court, No. 23 JA 56. Heard in the Court of Appeals 13 February 2025.

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

*James N. Freeman, Jr. for appellee Guardian ad Litem.*

*Jason R. Page for respondent-appellant mother.*

FREEMAN, Judge.

Respondent-mother appeals from the trial court's permanency planning order awarding guardianship of E.B. ("Emma") to the juvenile's maternal grandparents and

denying respondent-mother visitation.<sup>1</sup> On appeal, respondent-mother argues: (1) the trial court abused its discretion in awarding guardianship and denying visitation, and (2) she received ineffective assistance of counsel. After careful review, we affirm the trial court's permanency planning order.

### **I. Factual and Procedural Background**

On 7 July 2023, the Surry County Department of Social Services ("DSS") received a report that Emma, then three years old, had consumed a pill from an open pill bottle and was acting disoriented. Rather than seeking medical attention for her child, respondent-mother forced Emma to vomit and thereafter refused to participate or cooperate with DSS's efforts to develop a safety plan.<sup>2</sup>

Based on this incident, DSS filed a juvenile petition on 10 July 2023 alleging that Emma was a neglected juvenile. The trial court entered an order that day granting non-secure custody to DSS and approving placement with Emma's maternal grandmother.

On 12 July 2023, the trial court ordered DSS to complete a home assessment and ordered respondent-mother to cooperate with DSS. During the home assessment, DSS found mold, trash, animal feces, little food, and small choking hazards in the home. Respondent-mother submitted to a drug screen and tested positive for

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<sup>1</sup> A pseudonym is used to protect the juvenile's identity pursuant to N.C. R. App. P. 42(b).

<sup>2</sup> Emma's putative father is not a party to this action as he has not established paternity, contacted DSS, or successfully been contacted by DSS.

amphetamines and methamphetamines. Hair follicle testing of three-year-old Emma indicated she was also positive for methamphetamine.

On 19 July 2023, DSS completed a second home assessment and found the home in the same state. DSS subsequently filed an amended juvenile petition on 24 July 2023, alleging that conditions of the home were hazardous and that both respondent-mother and Emma returned positive drug screens.

Respondent-mother was ordered two hours a week supervised visitation and signed a visitation agreement. Respondent-mother attended most visits until 31 August 2023; however, DSS had to intervene at every visit due to respondent-mother's inappropriate and aggressive behavior. Respondent-mother told Emma that they should run away, that DSS had kidnapped Emma, that Emma would be home soon, and generally spoke about the case in front of Emma.

At a visit on 19 July 2023, respondent-mother "became increasingly agitated . . . held her head in her hands, said she was dizzy and upon standing began swaying . . . and dropping things out of her hands." Respondent-mother banged her head on the table, stared at the wallpaper saying, "I thought they were seahorses," and stated she was hearing things. At a later visit on 16 August 2023, respondent-mother "flipped her middle finger" at a social worker through a two-way mirror after the social worker reminded respondent-mother not to discuss the case with Emma.

On 23 August 2023, respondent-mother entered into a case plan and agreed to address the following issues: mental health, substance abuse, parenting, housing,

employment, life skills, and anger management. Adjudication and disposition hearings were held on 31 August 2023, during which the trial court held respondent-mother in direct criminal contempt for disrupting the proceedings by interrupting witnesses' testimony and exhibiting erratic behavior. After the hearings, the trial court adjudicated Emma as a neglected juvenile and ordered that DSS would retain custody, placement would continue with Emma's grandparents, and reunification would remain the permanent plan.

The trial court further ordered respondent-mother to: (1) obtain a substance abuse assessment and comply with the recommended treatment; (2) obtain a mental health assessment and comply with the recommended treatment; (3) complete life skills classes, parenting classes, and anger management counseling; (4) comply with the case plan and the requests of DSS, including random drug screens; and (5) obtain a suitable residence and gainful employment. Additionally, the trial court ordered that visitation "shall cease pending case plan progress, especially, the mental health, substance abuse, parenting, and anger management components," but that visitation could resume if such progress was made and if DSS and the Guardian ad Litem ("GAL") deemed such visitation to be in Emma's best interest.

On 16 November 2023, the first permanency planning hearing took place. After the hearing, the trial court again ordered that DSS retain custody and placement continue with Emma's grandparents but modified the permanent plan by making guardianship the primary plan and reunification the secondary plan. The

trial court reiterated its prior orders that respondent-mother make progress on her case plan and that visitation remain ceased.

On 16 May 2024, the second permanency planning hearing took place. Before the hearing began, a judicial assistant informed the trial court of a phone call received from respondent-mother. The judicial assistant relayed the content of the conversation to the trial court:

She does not like you. Every time she's in front of you, she goes to jail. She does not think it's fair. DSS should not have taken her child[ ]. The pictures aren't real, all the things she has stated. She didn't state anything new to me.

...

It was not anything I had not heard before in or out of court out of her own mouth.

...

There was not any new information, but I was very clear with her if she did not appear the case would move on without her. It was at like 8:53. I told her that if she was coming to Court, she needed to be on her way.

...

I said you have every right to be here, your attorney can advocate on your behalf, that's your attorney's job, if you do not appear, the case will move without you.

Respondent-mother did not attend the hearing. During the hearing, the trial court admitted a DSS report and a GAL report into evidence. Wendy Harmon, a DSS Social Work Supervisor, was the sole testifying witness. Respondent-mother's counsel did not cross-examine Ms. Harmon, present evidence, make any objections,

or put forth any argument.

On 23 May 2024, the trial court entered a permanency planning order containing the following factual findings:

1. The Respondent Mother was not present for the hearing . . . . The Respondent Mother spoke with the Judge's office in the morning of the court session and indicated she did not wish to attend the hearing.
2. On 8/31/2023, the juvenile was found to be in the jurisdiction of the court as a neglected juvenile.
3. The juvenile's needs are being met in the relative kinship placement provided by the maternal grandmother and step-grandfather, . . . and the child is receiving routine and special medical and dental care, as indicated.
4. The juvenile has access to normal childhood activities and developmentally appropriate toys and the placement provider is employing a reasonable and prudent parenting standard in her care of the minor child.
5. The juvenile tested positive for Methamphetamines following a hair drug screen on 7/10/2023.
6. The Respondent Mother has prior agency history from 2021 wherein the juvenile tested positive for methamphetamine and there was domestic violence between the mother and . . . [the] putative father of the juvenile.
7. Paternity has not been established.
8. The juvenile has described a burn on her arm as something mommy did with a lighter when she was smoking a pipe.
9. The Respondent Mother has prior criminal convictions and pending charges.

10. [Putative father] has prior criminal convictions.

11. The Respondent Mother entered a case plan on 8/23/2023, agreeing to address the following issues: mental health, substance abuse, parenting, housing, employment, life skills, and anger management.

12. The Department sent a referral to Daymark on 8/23/2023 for the mother to complete a clinical assessment, which the mother did, on 11/14/2023, and the mother was recommended to complete SAIOP treatment; additionally, the mother was told that continued use of substances would result in referral to a higher level of care.

13. Following the clinical assessment, the Respondent Mother was diagnosed with Major Depressive Disorder, Single episode, Moderate; Generalized Anxiety Disorder; Amphetamine-type substance use disorder, severe; and PTSD.

14. The Respondent Mother previously disclosed to the Department that she has a history of mental health issues which may contribute to her use of substances, including methamphetamine.

15. Additionally, the Respondent Mother disclosed to the Department that she uses Methamphetamine to help her control her ADHD and because it gives her energy.

16. The Respondent Mother advised that she is prescribed Tegratol for seizures and that she takes Strattera for her ADHD.

17. Collaterals have reported that the Respondent Mother sleeps all day and stays up all night.

18. The Respondent Mother did not complete the necessary and recommended treatment at Daymark.

19. Since the last hearing in this matter, the Respondent Mother has completed no drug screens . . . although the Department made numerous attempts to do so but was

unable to contact the mother on any of the attempts.

20. The Respondent Mother was previously charged with three counts of communicating threats while communicating with social workers at the Department; the mother's communication with the Department about the case has remained inappropriate and focused on the events that led to the child's entry into care.

21. The Department made a referral to both The Children's Center and The Legacy Center for the Respondent Mother's parenting classes, but the mother did not engage in either program. The Legacy Center attempted to contact the mother on many occasions but was unable to do so, and the mother never contacted the provider.

22. The Department provided Respondent Mother with the phone number for The Legacy Center, twice, to complete the required Life Skills classes; the Respondent Mother did not engage in or complete the Life Skills classes. The Legacy Center attempted to contact the mother on many occasions but was unable to do so, and the mother never contacted the provider.

23. The Respondent Mother has not provided verification of employment or income to the Department during the life of the case.

24. The Department conducted a home assessment on 7/12/2023 and 7/19/2023, and at both home assessments, the Department observed mold, trash, and cat feces in the main living areas, little food in the home, and small choking hazards.

25. The Respondent Mother has not reported to the Department a change in the home conditions, so another home assessment has not been completed at this time.

26. The Department added anger management to the Respondent Mother's case plan due to the mother's aggressive interactions with staff at the Department and in front of the juvenile.



27. Collaterals have reported to the Department that the Respondent Mother is quick to anger and appears to struggle to control her behaviors. The Department made a referral for the Respondent Mother at DonLin counseling to complete an anger management assessment and any recommended treatment, and the mother did complete an assessment, but she did not engage in the recommended 10 treatment sessions.

28. The provider at DonLin reported to the Department that the Respondent Mother was oppositional towards the process in general.

...

32. The Court ceased the Respondent Mother's visitations and telephone calls following the disposition hearing after concerns were raised during the Respondent Mother's visitations including inappropriate behaviors on the mother's part during the visits and the mother's failure to follow the rules of the visitations.

33. Though the Respondent Mother agreed to the visitation rules, the mother continued to discuss inappropriate topics with the juvenile, including the juvenile matter.

34. In two different visits, the Respondent Mother told the juvenile she thought they should run away; additionally, the Respondent Mother told the juvenile that DSS had kidnapped the juvenile and that she would be home soon.

35. Due to these behaviors, DSS staff had to intervene at every visit held.

36. On 8/16/2023, when the Foster Care SW Supervisor intervened, the Respondent Mother flipped her middle finger at staff through the two-way mirror.

37. The Respondent Mother also had phone calls with the juvenile, supervised by the placement provider, and the Respondent Mother was inappropriate during the calls, calling at all hours of the day and night, often discussing

the case, and speaking negatively of DSS, the Court, and the placement provider to the child.

38. On 8/16/2023, the placement provider shared that, during the last phone call between the mother and juvenile, the Respondent Mother told the juvenile, “You act like you have been kidnapped and abused.”

39. The placement provider ended the 8/16/2023 call and had to end multiple calls prior thereto due to this type of behavior.

40. The Respondent Mother used vulgar language in front of the juvenile during visits and phone calls.

41. The Respondent Mother visited with the juvenile on 8/30/2023, and prior to entering the visitation room, the DSS foster care Social Worker Supervisor spoke with the mother about appropriate and inappropriate discussions and behaviors during the visit; however, the mother ended the visit 10 minutes early because the juvenile kept asking for the placement and indicated that she wanted to leave.

42. Before leaving the visit, the Respondent Mother told the juvenile that she was not coming back anymore and the child would never see her again . . . .

43. Since the last hearing in this matter, the Respondent Mother’s communication with the Guardian ad Litem was ordered to be through her attorney, only, and with the Department, via email, only.

44. The Respondent Mother’s communication with the Department remained inappropriate and unproductive.

45. The Department has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, to reunify the juvenile with the Respondent Mother, . . . and towards the permanent plan of reunification as more particularly set forth in the Court’s findings of fact found in the above-incorporated Reports.

46. Barriers to the permanent plan of reunification remain at this time as more particularly set forth in the Court's findings of fact found in the above-incorporated Reports.

47. Reunification is not appropriate at this time and it is not likely that the juvenile could be returned safely to the home within the next six months as more particularly set forth in the Court's findings of fact found in the above-incorporated Reports.

48. The Respondent Parents are not making adequate progress within a reasonable period of time under the plan.

49. The Respondent Parents are not actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.

50. The Respondent Parents have not remained available to the court, the department, and the guardian ad litem for the juvenile.

51. The Respondents are acting in a manner inconsistent with the health or safety of the juvenile.

52. A return of the juvenile to the juvenile's own home would be inconsistent with the juvenile's health or safety.

53. The placement is meeting the needs of the juvenile and is serving the juvenile's best interests.

54. The placement has indicated a willingness to provide for the juvenile's permanence by way of guardianship if reunification cannot be successfully achieved.

55. Therefore, the permanent plan most likely to result in a safe, permanent home within a reasonable period of time remains a primary plan of guardianship with a relative and a secondary plan of reunification.

56. The Court notes and incorporates herein the Department's attachments to the DSS Court Report, the Comprehensive Provider Assessment ("CPA") and the

Financial Affidavit, wherein [Emma's grandparents] were assessed as the potential guardians for the minor child.

57. [Emma's grandparents] understand the legal significance of their role as the legal guardians for the minor child, and have adequate resources to care and provide for the child.

58. The court referenced the CPA and Financial Affidavit submitted by DSS, which details the thorough assessment of the prospective guardians' understanding and ability to provide for the physical, emotional, and financial care of the child, as well as, the thorough home study conducted by DSS of the prospective guardians' home.

59. It is evident from the CPA and the Financial Affidavit that [Emma's grandparents] have adequate financial resources to meet the basic and immediate needs of the juvenile and can provide the juvenile proper care and supervision in a safe home.

60. [Emma's grandparents] are fit and proper persons to have the care, custody, control, and guardianship of the juvenile.

Based upon these factual findings, the trial court concluded, in relevant part, that:

13. It is in the best interest of the juvenile that the legal and physical custody, control, and guardianship of the juvenile . . . be granted to [Emma's grandparents].

14. The Respondent Parents should not have visitations at this time as the Court has concluded that such visitations would not be consistent with the juvenile's best interest due to the father's lack of engagement with the Department, the Court, and the child, and the mother's failure to alleviate the issues that gave rise to the cessation of the mother's visits by this Court.

Accordingly, the trial court ordered that guardianship be granted to Emma's

grandparents and that no visitation take place between respondent-mother and Emma, though respondent-mother was permitted to file a motion to request a formal visitation plan. Respondent-mother timely appealed.

## **II. Jurisdiction**

This Court has jurisdiction to review “any order, other than a nonsecure custody order, that changes legal custody of a juvenile.” N.C.G.S. § 7B-1001(a)(4) (2023). Accordingly, we have jurisdiction to review the trial court’s permanency planning order awarding guardianship to Emma’s maternal grandparents.

## **III. Standard of Review**

“This Court’s review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and whether the findings support the conclusions of law.” *In re P.O.*, 207 N.C. App. 35, 41 (2010). “The trial court’s findings of fact are conclusive on appeal if unchallenged or if supported by competent evidence in the record.” *In re I.K.*, 377 N.C. 417, 422 (2021) (cleaned up).

A “decision of the trial court regarding best interests of a juvenile,” such as a decision on guardianship or visitation, “is within the trial court’s discretion and will not be overturned absent an abuse of discretion.” *In re L.M.*, 238 N.C. App. 345, 349 (2014). We review de novo both the trial court’s conclusions of law, *In re P.O.*, 207 N.C. App. at 41, and respondent-mother’s claim of ineffective assistance of counsel, *State v. Parker*, 290 N.C. App. 650, 653 (2023).

#### **IV. Discussion**

Respondent-mother argues the trial court abused its discretion by awarding guardianship to Emma’s grandparents and by continuing the cessation of visitations. Additionally, respondent-mother argues she received ineffective assistance of counsel at the second permanency planning hearing. We address each argument in turn.

##### **A. Guardianship and Visitation**

Respondent-mother first argues the trial court “abused its discretion by awarding guardianship” and “failing to provide [her] visitation[.]”<sup>3</sup> Specifically, respondent-mother contends that findings of fact 36–43 and 50 are unsupported and that she “has not had an opportunity to alleviate” the issues that gave rise to the cessation of visitation as “[t]here was little she could have done while in jail while her visitation was suspended.”

##### **1. Guardianship**

The General Assembly has expressed that one of the “purposes and policies” of our Juvenile Code is to “provide standards . . . for ensuring that the best interests of the juvenile are of paramount consideration” and “that when it is not in the juvenile’s

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<sup>3</sup> Respondent-mother also contends the trial court erred by effectively relieving DSS of reunification efforts. However, beyond mere conclusory statements and recitations of fact, respondent-mother fails to present any legal argument or citations to authority in support of this contention. Accordingly, this issue is abandoned. See N.C. R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”); *Fairfield v. WakeMed*, 261 N.C. App. 569, 575 (2018) (“Plaintiffs do not cite any legal authority in support of this argument as required by the North Carolina Rules of Appellate Procedure. Therefore, we deem this issue to be abandoned.”).

best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time.” N.C.G.S. § 7B-100(5) (2023). Accordingly, the court “shall conduct a review or permanency planning hearing within 90 days from the date of the initial dispositional hearing” and if “custody has been removed from a parent . . . the hearing shall be designated as [a] permanency planning hearing.” N.C.G.S. § 7B-906.1(a) (2023).

At a permanency planning hearing, the court “may . . . appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600[.]” *Id.* § 7B-906.1(i) (2023); *see also id.* § 7B-600(a) (2023) (“In any case . . . when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile.”); *id.* § 7B-903(a) (2023) (listing dispositional alternatives, including guardianship, “when the court finds the disposition to be in the best interests of the juvenile[.]”).

If the court . . . appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile. The fact that the prospective custodian or guardian has provided a stable placement for the juvenile for at least six consecutive months is evidence that the person has adequate resources.

*Id.* § 7B-906.1(j) (2023).

In other words, our Juvenile Code permits a trial court to award guardianship of a neglected juvenile to an appropriate person if the trial court determines such

guardianship is in the best interests of the juvenile. That decision “regarding best interests of a juvenile is within the trial court’s discretion and will not be overturned absent an abuse of discretion.” *In re L.M.*, 238 N.C. App. at 349. Further, “[t]he trial court’s findings of fact are conclusive on appeal if unchallenged or if supported by competent evidence in the record.” *In re I.K.*, 377 N.C. at 422 (cleaned up).

Here, although respondent-mother argues that the trial court “abused its discretion by awarding guardianship,” she fails to articulate *how* the trial court allegedly abused its discretion beyond a mere conclusory statement that the trial court’s order “is manifestly unsupported by reason.” Respondent-mother does not argue that the trial court failed to comply with the relevant statutory requirements. *See* N.C.G.S. §§ 7B-903 and 7B-906.1. Instead, respondent-mother challenges findings 36–43 as “not based on evidence admitted at this hearing” and finding 50 as “unsupported.”

Even presuming, without deciding, that findings 36–43 and 50 are unsupported, the remaining fifty-one unchallenged findings provide more than adequate support for the trial court’s determination that guardianship was in Emma’s best interests. *See In re I.K.*, 377 N.C. at 422 (“The trial court’s findings of fact are conclusive on appeal if unchallenged[.]” (cleaned up)). Notably, respondent-mother does not challenge finding 48, that she is “not making adequate progress within a reasonable period of time under the [case] plan,” finding 51, that she is “acting in a manner inconsistent with the health or safety of the juvenile,” finding 52,



that a “return of the juvenile to the juvenile’s own home would be inconsistent with the juvenile’s health or safety,” or any of the findings regarding Emma’s grandparents and their fitness to serve as guardians.

The trial court’s unchallenged and conclusive findings demonstrate that respondent-mother has: (1) refused to meaningfully participate with DSS, the GAL, or the trial court (findings 1, 19, 20, 23, 44, 48, 49, 51); (2) criminally threatened DSS staff (finding 20); (3) continually displayed inappropriate and aggressive behaviors, even in front of Emma (findings 26, 32, 33, 34, 35); and (4) otherwise made minimal progress on any aspect of her case plan, including the mental health, substance abuse, anger management, and parenting aspects (findings 18, 19, 20, 21, 22, 23, 25, 27, 28, 44, 48, 49, 51). Based on the trial court’s unchallenged and conclusive findings of fact, the trial court did not abuse its discretion by concluding it was in Emma’s best interests to award guardianship to Emma’s grandparents.

## **2. Visitation**

Respondent-mother next argues that the trial court abused its discretion in failing to award her visitation with Emma. Specifically, respondent-mother contends that: (1) the trial court’s conclusion that visitation would not be in Emma’s best interests is not supported by the trial court’s factual findings, and (2) because respondent-mother was “incarcerated six times, totaling 81 days” since visitation was initially suspended on 31 August 2023, she “has not had an opportunity to alleviate those issues” that led to the cessation of visitation. We disagree.

“An order that . . . continues the juvenile’s placement outside the home shall provide for visitation that is in the best interests of the juvenile consistent with the juvenile’s health and safety, including no visitation.” N.C.G.S. § 7B-905.1(a) (2023).

The assessment of the juvenile’s best interests concerning visitation is left to the sound discretion of the trial court and appellate courts review the trial court’s assessment of a juvenile’s best interests solely for an abuse of discretion. Under this standard, we defer to the trial court’s decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.

. . . Unchallenged findings of fact are binding on appeal. Furthermore, a trial court’s decisions as to the weight and credibility of the evidence, and the inferences drawn from the evidence, are not subject to appellate review.

*In re A.J.L.H.*, 386 N.C. 305, 312 (2024) (cleaned up).

Here, the trial court concluded in relevant part that visitation between respondent-mother and Emma “would not be consistent with the juvenile’s best interest due to . . . the mother’s failure to alleviate the issues that gave rise to the cessation of the mother’s visits[.]” Respondent-mother contends “this conclusion is not supported by competent findings of fact” because the “issues that gave rise to the cessation of visitation are behaviors that took place during the visitation” and respondent-mother “has not had an opportunity to alleviate those issues because no visitation of any type has been allowed.”

Respondent-mother’s contention misconstrues the nature of the trial court’s conclusion and mischaracterizes the “issues that gave rise to the cessation of the

mother's visits." The trial court's conclusion that visitation would not be in Emma's best interests is amply supported by the unchallenged and conclusive factual findings regarding respondent-mother's behavior and lack of progress on her case plan. To the extent, if any, that the trial court's additional reasoning regarding respondent-mother's failure to alleviate previous issues is relevant to our review, respondent-mother's attempt to attack this reasoning is unavailing.

After the 31 August 2023 adjudication and disposition hearings, the trial court ordered respondent-mother's visitation "shall cease pending case plan progress, especially the mental health, substance abuse, parenting, and anger management components, as the Court has concluded that said visitations are not in the juvenile's best interest at this time[.]" Therefore, the "issues that gave rise to the cessation of the mother's visits" were respondent-mother's lack of "case plan progress, especially the mental health, substance abuse, parenting, and anger management components[.]"

Respondent-mother's assertion that she "has not had an opportunity to alleviate those issues because no visitation of any type has been allowed" is wholly without merit. Visitation with Emma is not a prerequisite to respondent-mother's compliance with her case plan, "especially the mental health, substance abuse, parenting, and anger management components[.]" As DSS, the GAL, and the trial court have repeatedly emphasized to respondent-mother, the inverse is true: respondent-mother's compliance with her case plan, "especially the mental health,

substance abuse, parenting, and anger management components,” is a prerequisite to visitation with Emma.

Similarly, respondent-mother’s final visitation argument—that her 81 days of incarceration between 31 August 2023 and 23 May 2024 somehow absolved her of responsibility for complying with her case plan—is meritless. Both this Court and our Supreme Court have clearly and repeatedly stated that in this context, “incarceration, standing alone, is neither a sword nor a shield[.]” *In re S.D.*, 374 N.C. 67, 75 (2020) (cleaned up). Even where a parent is genuinely “unable,” rather than unwilling, “to engage in the full range of remedial services required by [their] case plan,” that parent’s “continued criminal activity . . . justifies, rather than undercuts, the trial court’s determination that there was a significant likelihood that [the juvenile] would be neglected in the event that she was returned to respondent-[parent’s] care.” *Id.* at 76–77.

Here, respondent-mother’s incarceration for 81 of the 309 days Emma was placed outside of the home in no way rendered her “unable to engage in the full range of remedial services required by [her] case plan.” *Id.* at 76. Rather, our review of the record establishes that respondent-mother has been unwilling to either meaningfully engage in the remedial services required by her case plan or otherwise alleviate the issues that gave rise to the cessation of visitation. Accordingly, the trial court did not abuse its discretion in concluding that visitation would not be in Emma’s best interests.

## **B. Ineffective Assistance of Counsel**

Finally, respondent-mother argues she received ineffective assistance of counsel because her counsel “did not cross examine DSS’ single witness,” “offered no evidence,” “failed to object to the introduction of hearsay reports,” “offered no argument, and only uttered 15 words during the entire hearing.” We disagree.

“In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right.” N.C.G.S. § 7B-602(a) (2023). “This statutory right includes the right to effective assistance of counsel.” *In re Dj.L.*, 184 N.C. App. 76, 84 (2007).

To prevail on a claim of ineffective assistance of counsel, respondent must show that counsel’s performance was deficient and the deficiency was so serious as to deprive [her] of a fair hearing. *To make the latter showing, the respondent must prove that there is a reasonable probability that, but for counsel’s errors, there would have been a different result in the proceedings.*

...

Applying this standard in proceedings under the Juvenile Code, we routinely resolve claims of ineffective assistance of counsel on the respondent’s failure to show prejudice. Resolving claims of ineffective assistance of counsel on the respondent’s failure to show prejudice is consistent with the recommendation by the Supreme Court of the United States and this Court’s precedent in criminal proceedings.

*In re B.B.*, 381 N.C. 343, 357–58 (2022) (cleaned up).

Here, respondent-mother fails to argue there is a reasonably probability that,

but for counsel’s errors, there would have been a different result in the proceedings. Accordingly, respondent-mother has failed to carry her burden of demonstrating that her counsel’s alleged errors, if errors at all, deprived her of a fair hearing. Even if respondent-mother had presented a prejudice argument, we agree with the GAL that respondent-mother “had a full and fair hearing that she chose not to attend. The evidence supporting the award of guardianship . . . and the continued cessation of visitation . . . was overwhelming.”

## **V. Conclusion**

“[T]he best interests of children . . . is the polar star of the North Carolina Juvenile Code.” *In re T.H.T.*, 362 N.C. 446, 450 (2008) (cleaned up). In this case, respondent-mother received a full and fair hearing, and the trial court did not abuse its discretion by concluding it would be in Emma’s best interests to award guardianship to her grandparents and to continue the cessation of respondent-mother’s visitation. Accordingly, we affirm the trial court’s permanency planning order.

**AFFIRMED.**

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).