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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-1054

Filed 7 May 2025

Catawba County, No. 23 JT 000180-170

IN THE MATTER OF:  
T.P.A.

Appeal by Respondent from order entered 2 August 2024 by Judge Scott D. Conrad in Catawba County District Court. Heard in the Court of Appeals 20 March 2025.

*Attorney W. Michael Spivey, for Respondent–Appellant Father.*

*Pope McMillan, PA, by Attorneys Clark D. Tew and Christian L. Kiechel, for Petitioner–Appellee Mother.*

*No brief filed on behalf of Guardian at litem.*

MURRY, Judge.

Respondent Kenneth R. Allen (Father) appeals from an order terminating his parental rights to his minor child, T.P.A. (Tony).<sup>1</sup> For the reasons below, this Court affirms the order.

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<sup>1</sup> In accordance with North Carolina Rule of Appellate Procedure 42(b), we refer to the minor child by a pseudonym to protect his identity. *See* N.C. R. App. P. 42(b).

## **I. Background**

Father and Stephanie N. Palazzo (Mother) are the parents of one minor child, Tony, who was born in Hickory, North Carolina on 7 February 2013. Father and Mother never married but lived together from 2012 to 2015, at which point their relationship ended. In 2016, the trial court granted Mother a domestic violence protective order against Father that prohibited him from contacting either Mother or Tony for one year. Mother and Tony moved to Cary, North Carolina during this time, when Mother began a relationship with Patrick Bain. They married in October 2020 and then moved with Tony to Catawba County. Father has not attempted to visit, support, or otherwise contact Tony since July of 2016.

On 6 September 2023, Mother petitioned to terminate Father’s parental rights to Tony. In her petition, she alleged that Father had “willfully abandoned . . . [Tony] in every meaningful way.” (Citing N.C.G.S. § 7B-1111(a)(4), (7) (2023)) During this litigation, the trial court appointed Va L. Yang as Tony’s attorney advocate on 4 December 2023 without objection. However, the trial court did not check the box on the Administrative Office of the Courts (AOC) form indicating that she “also act[s] as [g]uardian *ad [l]item*” (GAL). In her capacity as the GAL, Yang submitted a “Guardian ad litem report” as evidence. Both parties and the trial court itself recognized her as the GAL throughout the proceedings.

At the termination and disposition hearing on 4 June 2024, Father’s attorney moved to continue the proceedings by claiming that Father needed additional time to

gather and present “character affidavits and other witnesses.” He did not further specify the nature of this additional evidence. The trial court denied the motion and granted Mother’s termination petition, concluding that Father had “willfully abandoned” Tony during the six months preceding its filing and that termination would be in Tony’s best interest. (Quoting *id.* § 7B-1111(a)(7).) The trial court entered its order terminating Father’s parental rights on 2 August 2024 and Father timely appealed on 27 August 2024.

## **II. Jurisdiction**

Under N.C.G.S. § 7B-1001, this Court has jurisdiction to hear Father’s appeal because it concerns an “order that terminates [his] parental rights” to Tony. *Id.* § 7B-1001(7) (2023).

## **III. Analysis**

On appeal, Father argues that the trial court erred by failing to appoint a guardian *ad litem* to represent Tony and by denying Father’s motion to continue. A trial court’s judgment concerning grounds for termination of parental rights is reviewed for “clear, cogent, and convincing evidence” that supports the trial court’s findings of fact. *In re S.R.*, 384 N.C. 516, 520 (2023). If such evidence exists, the findings of fact are “conclusive even if the record contains evidence that would support a contrary finding.” *Id.* The trial court’s conclusions of law are reviewed *de novo* to determine whether they are supported by the findings of fact. *Id.* For the reasons below, we hold that the trial court did not err on either count.

**A. Guardian *Ad Litem* Appointment**

This Court holds that the trial court’s clerical failure to check a particular box does not abrogate Ms. Yang’s legal status as GAL because both the parties and the trial court recognized her as “the guardian *ad litem*” throughout the proceedings. Our Supreme Court recognizes that a clerical error in checking a box on an AOC form does not substantively or procedurally prejudice a defendant on its own. *See In re C.J.C.*, 374 N.C. 42, 45 (2020) (holding that failure to check the box indicating attorney advocate’s simultaneous GAL status was “merely a clerical error” and “without merit” because the record and transcript indicated the dual status). Here, as in *In re C.J.C.*, notwithstanding the clerical error in failing to check the specific box on the form, it is clear that the trial court did appoint Ms. Yang to serve as Tony’s GAL and that she served in that role throughout the proceedings.

**B. Motion to Continue Denial**

Father also argues that the trial court erred by denying his motion to continue. A trial court may grant a continuance of an adjudicatory hearing in a termination-of-parental-rights case up to 90 days from the date of the initial petition if the movant can show “good cause.” N.C.G.S. § 7B-1109(d) (2023). The continuance may extend the hearing *beyond* these 90 days only in “extraordinary circumstances.” *Id.* The existence of either good cause or extraordinary circumstances is subject to the trial court’s discretion. *In re D.Q.W.*, 167 N.C. App. 38, 42 (2004). The movant must also

show that the denial of the motion to continue resulted in prejudice. *In re A.L.S.*, 374 N.C. 515, 517 (2020).

Here, Father claims the need for extra time to gather “character affidavits.” However, additional character evidence would have little relevance to the issue presented at the hearing: whether Father willfully abandoned Tony during the six months immediately before Mother filed her termination petition. Father’s character was not at issue during the hearing, nor does the record suggest that the presentation of additional supporting affidavits would have caused the trial court to reach a different outcome regarding Tony’s best interests. Father also claimed to need additional time to gather “other witnesses” to testify but did not identify these potential witnesses or specify their testimonial contributions. Because the record does not include what the testimony of these witnesses would have contained, Father cannot show that their absence prejudiced his case at bar. *See In re A.L.S.*, 374 N.C. 515, 518 (2020) (holding that respondent failed to show prejudice where counsel offered only a vague description of the expected testimony). Finally, as the trial court noted at the 4 June 2024 hearing, because this matter was filed on 6 September 2023, it had been pending for nearly nine months by the time it came to trial. Accordingly, Father had nearly nine months to locate and subpoena witnesses to testify on his behalf regarding the issues raised in the termination petition. Thus, this Court holds that the trial court did not abuse its discretion by denying his motion to continue.

#### **IV. Conclusion**

IN RE: T.P.A.

*Opinion of the Court*

For the reasons discussed above, this Court affirms the trial court's order terminating Father's parental rights to Tony.

AFFIRMED

Judges HAMPSON and GORE concur.

Report per Rule 30(e).