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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-1013

Filed 21 May 2025

Henderson County, Nos. 17JT000190-440, 21JT000013-440, 21JT000014-440

IN THE MATTER OF: K.L.S-L., K.M.S-L., L.R.S-L.

Appeal by respondent-mother from order entered 8 July 2024 by Judge Lora Baker in Henderson County District Court. Heard in the Court of Appeals 24 April 2025.

Parry Law, PLLC, by Edward Eldred, for respondent-appellant mother.

Assistant County Attorney Susan Fosmire Davis, for petitioner-appellee Henderson County Department of Social Services.

Nelson Mullins Riley & Scarborough LLP, by Carrie A. Hanger, for the guardian ad litem.

FLOOD, Judge.

Respondent-Mother appeals from the trial court's order terminating her parental rights in K.L.S-L. ("Kim"), K.M.S-L. ("Kat"), and L.R.S-L. ("Lee") (collectively, the "minor children").¹ On appeal, Respondent-Mother argues the trial

¹ Pseudonyms are used to protect the juveniles' identities, pursuant to N.C.R. App. P. 42(b).

court violated her “state and federal due process rights” to make a closing argument at the adjudication stage of the termination of parental rights hearing. Upon review, we conclude Respondent-Mother failed to preserve her constitutional argument by not bringing it to the attention of the trial court, despite having the opportunity to do so. We therefore do not reach the merits of Respondent-Mother’s constitutional argument, and affirm the trial court’s order terminating her parental rights.

I. Factual and Procedural Background

Respondent-Mother and Respondent-Father² (collectively, “Respondent-Parents”) are the biological parents of the minor children. Henderson County Department of Social Services (“DSS”) became involved at Kim’s birth on 15 June 2017, when Kim tested positive for methamphetamines, amphetamines, benzodiazepines, and THC. On 1 November 2017, DSS filed a juvenile petition alleging Kim was a neglected juvenile, and obtained nonsecure custody that same day. On 2 November 2017, DSS filed a supplemental petition that provided: Respondent-Parents admitted to a history of substance abuse; from September to October 2017, Respondent-Parents experienced employment and housing instability; and on a visit by DSS on 31 October 2017 to the camper in which Respondent-Parents and Kim were living, Respondent-Father prevented the social worker from entering the home. On 19 April 2018, the trial court held an adjudication hearing, and upon

² Respondent-Father is not a party to this appeal.

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finding that DSS failed to prove Kim was a neglected juvenile, dismissed the juvenile petition.

Kat was thereafter born on 19 October 2018, and Lee on 7 April 2020. On 28 February 2021, Respondent-Mother and the minor children—who had been staying at a motel the previous two nights—returned to the home where [Respondent-Father] lived, where, upon their arrival, Respondent-Mother “saw the car of [Respondent-Father’s] girlfriend outside the home[.]” Respondent-Mother then “proceeded to smash the windows of the car with a pipe while the [minor children] were in [Respondent-Mother’s] car.” Respondent-Father “heard [Respondent-Mother] laying on her car horn outside of his house[.] As he came outside[.] he saw her drive off and noticed the windows of his girlfriend[’]s car had been busted[.] . . . [H]e grabbed a gun and fired a shot to let [Respondent-Mother] know he was outside[.]”

Respondent-Father then

got in his own vehicle, and followed [Respondent-Mother] after she left in her car. [Respondent-Mother] . . . drove around [Respondent-Father] . . . and [he] hit the back of [Respondent-Mother’s] car with his vehicle then sideswiped her[.] When [Respondent-Mother] stopped her car, [Respondent-Father] approached her and she rolled her windows down[.] [He] then punched [Respondent-Mother] twice in the eye bloodying her face, took her keys, and threw them in the woods next to a mobile home park.

Respondent-Mother was subsequently taken to the hospital for medical care, and that same day, was arrested for misdemeanor child abuse and injury to personal property.

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Respondent-Father was also arrested that same day for assault on a female, and three counts of child abuse or endangerment.

Following these events, on 1 March 2021, DSS filed a juvenile petition alleging the minor children to be neglected juveniles. That same day, DSS obtained nonsecure custody of the minor children. At a hearing on 1 April 2021, the trial court adjudicated the minor children to be neglected juveniles, and established a reunification plan for Respondent-Parents.

At subsequent permanency planning hearings held on 29 July 2021, 6 January 2022, and 7 April 2022, the trial court found Respondent-Mother had not made progress on the requirements for reunification. At a permanency planning hearing held on 26 May 2022, the trial court found that Respondent-Mother's having unsupervised visitation with the minor children "would be contrary to the welfare of the" minor children. As a result, the trial court granted custody of the minor children to Respondent-Father.

Less than two months following Respondent-Father's being granted custody of the minor children—on 12 July 2022—DSS filed its third juvenile petition alleging the minor children were neglected, and once again obtained nonsecure custody of the minor children. At a hearing held on 4 August 2022, the trial court again adjudicated the minor children to be neglected juveniles, and established a reunification plan with Respondent-Parents. At permanency planning hearings held on 3 November 2022

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and 4 May 2023, the trial court found Respondent-Mother had not made any progress on the reunification plan. At the 21 December 2023 permanency planning hearing, the trial court changed the primary plan to “termination of [Respondent-Parents’] parental rights, with subsequent adoption of the” minor children.

On 14 January 2024, DSS filed a petition to terminate Respondent-Parents’ parental rights in the minor children. The matter came on for hearing on 23 May 2024. Respondent-Mother was present each day of the hearing, and Respondent-Mother’s counsel cross-examined witnesses and raised objections where appropriate. Respondent-Mother testified and entered exhibits into evidence. Neither DSS nor Respondent-Mother gave or requested closing arguments. After the trial court rendered a ruling following the adjudication phase of the hearing, and after it rendered a ruling at the disposition phase of the hearing, on 8 July 2024, the trial court entered an order terminating Respondent-Parents’ parental rights. Respondent-Mother timely appealed.

II. Jurisdiction

This Court has jurisdiction to review the termination of Respondent-Mother’s parental rights, pursuant to N.C.G.S. §§ 7A-27(b)(2) and 7B-1001(a)(7) (2023).

III. Analysis

On appeal, Respondent-Mother argues the trial court violated her “state and federal due process rights” to make a closing argument at the adjudication stage of

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the termination of parental rights hearing. As a preliminary matter, Respondent-Mother argues: (A) her alleged constitutional error is “automatically preserved for appellate review,” or in the alternative, (B) this Court should invoke Rule 2 of the North Carolina Rules of Appellate Procedure. We address each argument, in turn.

A. Preservation of Constitutional Issue

Respondent-Mother first argues her alleged error is “automatically preserved for appellate review” because she was not afforded an opportunity to object at the termination of parental rights hearing. We disagree.

“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1). “It is well settled that an error, even one of constitutional magnitude, that [a party] does not bring to the trial court’s attention is waived and will not be considered on appeal.” *State v. Bursell*, 372 N.C. 196, 199 (2019) (citation omitted); *see also State v. Hunter*, 305 N.C. 106, 112 (1982) (“[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal.”); *State v. Ashe*, 314 N.C. 28, 39 (1985) (providing that, generally, a “defendant’s failure to object to alleged errors by the trial court operates to preclude raising the error on appeal”).

In the recent case of *In re J.N.*, our Supreme Court considered a very similar

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issue as to whether a parent’s constitutional argument is waived when it is not first brought before the trial court. 381 N.C. 131, 133 (2022). In *In re J.N.*, the trial court entered an order granting the maternal grandparents’ guardianship of the minor children; the father appealed to this Court, arguing in relevant part that the trial court erred in granting guardianship “without first finding that he was an unfit parent or he had acted inconsistently with his constitutional right to parent.” *Id.* at 132. On appeal, this Court held that the father had waived his argument when he failed to raise it before the trial court. *Id.* at 132–33. On further appeal, our Supreme Court affirmed this Court’s decision, providing that: “the existence of a constitutional protection does not obviate the requirement that arguments rooted in the Constitution be preserved for appellate review”; and because the father had the opportunity to raise the constitutional issue before the trial court and “failed to do so[,]” the father “waived the argument for appellate review.” *Id.* at 133–34.

Here, Respondent-Mother has failed to preserve her constitutional argument for appellate review. *See id.* at 133–34; *see also Bursell*, 372 N.C. at 199. At the close of all evidence, the trial court asked the parties if there was any further cross-examination or rebuttal evidence. The trial court then began rendering its ruling at the adjudication stage of the hearing, beginning with a ruling as to Respondent-Father. Respondent-Mother’s counsel did not object. The trial court then issued a ruling as to Respondent-Mother, where, again, Respondent-Mother’s counsel did not

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object. The hearing then continued to the dispositional stage, where Respondent-Mother's counsel—once again—failed to object to the lack of a closing argument during the trial court's ruling. Respondent-Mother was provided ample opportunity to object during the trial court's rendering of its rulings as to Respondent-Parents, at either the adjudication or dispositional stages of the hearing, yet Respondent-Mother failed to object. Just as in *In re J.N.*, where the father had the opportunity to raise the constitutional argument before the trial court yet failed to do so, so here did Respondent-Mother fail to raise her constitutional argument before the trial court despite having had the opportunity to do so, and thus failed to preserve the issue for appellate review. 381 N.C. at 133–34; *see also* N.C.R. App. P. 10(a)(1); *Bursell*, 372 N.C. at 199.

Respondent-Mother cites to *In re R.P.*, 252 N.C. App. 301 (2017), to argue “that an appellate court will not find waiver where the respondent was not given an opportunity to object at trial.” Respondent-Mother's reliance on *In re R.P.*, however, is misplaced. In *In re R.P.*, this Court concluded that the trial court failed to hold a proper permanency planning hearing where it “strictly limited [the evidence] to the issue of visitation[,]” and as a result of “the trial court [] not hold[ing] a proper hearing, [the] respondent was not offered the opportunity to raise an objection on constitutional grounds.” *Id.* at 305. In the case *sub judice*, by contrast, Respondent-Mother: fully participated in the hearing by cross examining witnesses, raising

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objections, testifying, and entering exhibits into evidence; and, as described previously, had ample opportunity to raise an objection prior to or during the trial court's rulings. There is no indication here that the trial court "did not hold a proper hearing[.]" *Id.* at 305. Accordingly, Respondent-Mother failed to preserve her constitutional argument for appellate review. *See In re J.N.*, 381 N.C. at 133–34; N.C.R. App. P. 10(a)(1); *Bursell*, 372 N.C. at 199.

B. Invoking Rule 2

Respondent-Mother next argues, in the alternative, that if her constitutional argument has not been preserved, this Court "may invoke Rule 2 of the Rules of Appellate Procedure[.]" Upon review, we decline to invoke Rule 2.

This Court may, on its own motion or that of a party,

employ Rule 2 and suspend any part of the appellate rules to prevent manifest injustice to a party, or to expedite decision in the public interest except when prohibited by other Rules of Appellate Procedure. Rule 2 must be applied cautiously, and it may only be invoked in exceptional circumstances. A court should consider whether invoking Rule 2 is appropriate in light of the specific circumstances of individual cases and parties, such as whether substantial rights of an appellant are affected.

Bursell, 372 N.C. at 305 (citations omitted) (cleaned up); *see also* N.C.R. App. P. 2.

This Court's invocation of Rule 2 is inappropriate in this instance. *See Bursell*, 372 N.C. at 305. Respondent-Mother makes no substantive argument in her brief as to why this Court should invoke Rule 2, stating only: "Should this Court find waiver

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for a failure to object, this Court may invoke Rule 2 of the Rules of Appellate Procedure to review the issue regardless of [Respondent-Mother's] failure to lodge an objection in the trial court.” There is no indication that this case involves “exceptional circumstances[,]” that invoking Rule 2 would “prevent manifest injustice to a party,” or that the “substantial rights of [Respondent-Mother]” are affected—particularly where Respondent-Mother was present and participated fully in the hearing; had ample opportunity to raise an objection on constitutional grounds; and does not otherwise, on appeal, contest the trial court’s termination of her parental rights in the minor children. *See id.* at 305; *see also* N.C.R. App. P. 2. Accordingly, in this Court’s discretion, we decline to invoke Rule 2.

IV. Conclusion

Upon review, we conclude Respondent-Mother failed to preserve her constitutional argument by not bringing it to the attention of the trial court, despite having the opportunity to do so. We further decline to invoke Rule 2 to review the issue on the merits. We therefore affirm the trial court’s order terminating Respondent-Mother’s parental rights.

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).