

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-69

Filed 19 August 2026

Orange County, No. 24JA001032-670

IN THE MATTER OF: K.P.

Appeal by Respondent-Father from Order entered 15 October 2025 by Judge Hathaway Pendergrass in Orange County District Court. Heard in the Court of Appeals 21 July 2026.

Jason R. Page for Respondent-Appellant Father.

Stephenson & Fleming, LLP, by Deana K. Fleming, for Petitioner-Appellee Orange County Department of Social Services.

Michelle FormyDuval Lynch for Guardian ad litem.

HAMPSON, Judge.

Factual and Procedural Background

Respondent-Father appeals from an Order terminating his parental rights to

Kevin.¹ The Record on appeal tends to show the following:

Kevin was born in 2017. He lived with his maternal grandmother from 2020 until her death in 2024, when he began living with Respondent-Father and Kevin's paternal grandmother.² On 4 April 2024, Orange County Department of Social Services (DSS) received a CPS report alleging Kevin was receiving improper care due to food insecurity. DSS offered food assistance and referred Respondent-Father for SNAP benefits. A few days later, after a verbal altercation with the paternal grandmother regarding his behavior and substance abuse, Respondent-Father moved out of the home. Respondent-Father acknowledged a history of substance abuse but denied he currently used drugs, and he indicated to DSS that he and Kevin could stay with his great uncle.

On 23 April 2024, Kevin was brought to school by persons not known to school staff. Kevin was extremely upset and informed staff he was living in Respondent-Father's car or staying with individuals who scared him while Respondent-Father left to earn money. Kevin was absent from school for the next two days, and DSS and school officials were unable to contact Respondent-Father. Respondent-Father contacted the paternal grandmother and made arrangements for Kevin to stay with her; the paternal grandmother confirmed to DSS that Kevin was with her and she

¹ A pseudonym agreed upon by the parties.

² Respondent-Mother was a party to the lower court proceeding but relinquished her parental rights and is not a party to this appeal.

would be sending him to school. When he returned to school on 26 April 2024 Kevin had marks on his face that he reported were caused when a “mean lady” he did not know hit him because he missed Respondent-Father and was upset.

On 9 May 2024, DSS filed a juvenile petition, was granted nonsecure custody of Kevin, and placed him with the paternal grandmother. DSS attempted to meet with Respondent-Father to develop a case plan, but he missed three scheduled meetings prior to the adjudication hearing and DSS was unable to meet with him. DSS held weekly visitation. Respondent-Father missed one visit and was late to the others. He appeared to be under the influence of substances during some of the visits and admitted to using marijuana before one visit. A drug screen completed for Family Treatment Court during this period returned positive results for methamphetamine and marijuana.

The trial court adjudicated Kevin as neglected on 1 July 2024. Respondent-Father was not present at the adjudication hearing. The trial court ordered Respondent-Father to engage with housing services and follow their recommendations, complete a comprehensive clinical assessment including a substance use assessment, comply with drug screens, and complete an eligibility screening with Family Treatment Court or Recovery Court.

The first permanency planning hearing was held on 19 September 2024. Respondent-Father was present for this hearing. The trial court found Respondent-Father lacked stable housing, employment, or transportation. Respondent-Father

had been screened for Family Treatment Court and agreed to participate. He had also admitted to substance use and agreed to be taken to detox, but did not follow through and testified that he did not intend to stop using marijuana. He had not completed a comprehensive clinical assessment. Respondent-Father missed all but three scheduled visits with Kevin between the adjudication and first permanency planning hearing.

The paternal grandmother was no longer able to care for Kevin at this time, and Kevin had been moved to a foster home. The trial court reduced Respondent-Father's visitation to two monthly visits and ordered him to confirm visits the day before. It ordered a primary plan of reunification with a secondary plan of adoption, and continued to order Respondent-Father complete a comprehensive clinical assessment and complete all requested drug screens.

On 1 November 2024, Respondent-Father was detained after turning himself in on an arrest warrant. He pleaded guilty to larceny and was placed on probation and released on 18 December 2024. He admitted to using methamphetamine between August 2024 and when he surrendered.

The second permanency planning hearing was held on 2 January 2025. Respondent-Father was not present for this hearing. The trial court found Respondent-Father was making minimal progress, was not cooperating with the plan, DSS, or the Guardian ad Litem. Respondent-Father had only attended three in-person visits with Kevin, had missed a visit despite confirming the day before, and

was late to visits. While Respondent-Father had agreed to participate in Family Treatment Court, he did not attend the scheduled session and had not opted in to the program. He had not completed any of the four drug screens requested by DSS following his release from custody, nor had he completed a comprehensive clinical assessment. The trial court continued to order a primary permanent plan of reunification and secondary plan of adoption.

Respondent-Father tested positive for methamphetamine, amphetamines, and marijuana on 3 January 2025. He opted into Family Treatment Court on 8 January 2025 but was discharged in February after missing seven of ten toxicology screens and failing to appear on court days. He attended a permanency planning review meeting on 12 March 2025, but DSS ended the meeting early due to his disruptive behavior. On 7 April 2025 he was arrested for failure to comply with the conditions of his probation. He declined a visit from a DSS social worker while in jail and did not contact DSS upon his release on 13 April 2025.

The third permanency planning hearing was held on 21 April 2025. Respondent-Father was not present. Respondent-Father had attended a single visit with Kevin since the January hearing, did not have stable housing or employment, and had not obtained a comprehensive clinical assessment. The trial court found Kevin was doing well in his foster home and had improved academically and emotionally since the start of the school year. The trial court ordered the primary plan be changed to adoption, with a secondary plan of reunification.

On 27 June 2025, DSS filed a Motion to terminate Respondent-Father's parental rights, and Respondent-Father filed an answer denying the material allegations. Respondent-Father was present at the courthouse for the termination hearing but, prior to the hearing, was arrested on a warrant for failure to appear in a criminal matter pending in Orange County District Court. Respondent-Father's counsel moved to continue the hearing, and the trial court denied the motion and conducted both the adjudication and disposition phases. Kevin's social worker testified and was cross-examined by Respondent-Father's counsel. The trial court found grounds existed to terminate his parental rights under N.C. Gen. Stat. § 7B-1111(a)(2), (a)(6), and (a)(7)—failure to make reasonable progress, dependency, and abandonment. It determined termination of Respondent-Father's parental rights was in Kevin's best interests, and ordered those rights be terminated. Respondent-Father appeals.

Issue(s)

The sole issue on appeal is whether the trial court erred by denying Respondent-Father's motion to continue the termination hearing.

Analysis

“A trial court's decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation.” *In re J.B.*, 172 N.C.

App. 1, 10, 616 S.E.2d 264, 270 (2005) (citations omitted). “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.” *In re A.L.S.*, 374 N.C. 515, 517, 843 S.E.2d 89, 91 (2020). In order to receive relief, Respondent-Father must show both that the denial of the motion to continue was erroneous and that he was prejudiced thereby.³ *In re D.J.*, 378 N.C. 565, 569, 862 S.E.2d 766, 770 (2021).

A trial court may continue a termination hearing to “receive additional evidence . . . or to receive any other information needed in the best interests of the juvenile. N.C. Gen. Stat. § 7B-1109(d) (2025). The trial court primarily considers “whether granting or denying a continuance will further substantial justice.” *In re D.W.*, 202 N.C. App. 624, 627, 693 S.E.2d 357, 357 (2010). Additionally, termination hearings must be conducted within 90 days from the filing of the petition unless there are extraordinary circumstances. N.C. Gen. Stat. § 7B-1109(d).

Respondent-Father argues the trial court abused its discretion in denying his motion to continue because he appeared in court on the day of the hearing and only failed to be present because he was taken into custody at the courthouse. He argues

³ When a motion to continue is based on a constitutional right, the motion presents a question of law and the order of the trial court is fully reviewable. *A.L.S.*, 374 N.C. at 517, 843 S.E.2d 89. Respondent-Father does not expressly argue the trial court’s ruling violated his constitutional rights as a parent or that a de novo standard of review is applicable, but he notes his “right to the companionship, care, custody, and control of his son ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’” *Stanley v. Illinois*, 405 U.S. 645, 651, 31 L.Ed.2d 551 (1972). Insofar as Respondent-Father’s appellate brief raises any constitutional argument, this argument was not made before the trial court and is therefore waived. *D.J.*, 378 N.C. at 569, 862 S.E.2d at 770.

there was sufficient time to reschedule the hearing and remain within the 90-day window provided under Section 7B-1109(d), as the petition was filed on 27 June 2025 and the hearing held on 4 September.

A parent's incarceration is not necessarily a bar to holding a termination hearing. *See, e.g., In re Murphy*, 105 N.C. App. 651, 652-53, 414 S.E.2d 396, 397, *aff'd*, 332 N.C. 663, 422 S.E.2d 577, 652 (1992) (holding due process does not provide an incarcerated parent "an absolute right to be transported to a termination of parental rights hearing in order that he may be present under either statutory or constitutional law"). But in certain circumstances our courts have held conducting a termination hearing in an incarcerated parent's absence to be reversible error, albeit generally when the parent asserts a violation of their constitutional rights. *See, e.g., In re C.A.B.*, 381 N.C. 105, 122, 871 S.E.2d 468, 481 (2022) (holding failure to continue hearing when COVID-19 prison lockdown prevented father from meeting with counsel or attending hearing violated due process rights).

We are unaware of any prior decisions of our courts addressing circumstances in which the parent is present for the termination hearing but taken into custody before the hearing is conducted or determining whether such facts constitute "extraordinary circumstances" for the purposes continuing the hearing past the 90-day window mandated by Section 7B-1109(d). Regardless of whether these are extraordinary circumstances, Respondent-Father could make bail and secure his release prior to the end of the 90-day window, unlike a parent serving a prison

sentence. The transcript does not reflect any discussion regarding whether a continuance to allow Respondent-Father this opportunity was feasible. The trial court declined to continue the hearing, thereby depriving itself of “a vital source of information regarding the nature of the parent/child relationship and the necessity of terminating parental rights.” *D.W.*, 202 N.C. App. at 629, 693 S.E.2d 360.

However, assuming the trial court’s denial of the motion to continue constituted an abuse of discretion, Respondent-Father has not shown he was prejudiced thereby. A parent’s absence from a termination hearing is not on its own sufficient to show prejudice. *In re C.M.P.*, 254 N.C. App. 647, 653, 803 S.E.2d 853, 858 (2017). When “a parent is absent from a termination proceeding and the trial court preserves the adversarial nature of the proceeding by allowing the parent’s counsel to cross examine witnesses, with the questions and answers being recorded, the parent must demonstrate some actual prejudice in order to prevail on appeal.” *Murphy*, 105 N.C. App. at 658, 414 S.E.2d at 400 (citation omitted).

Here, Respondent-Father’s counsel appeared at the termination hearing, cross-examined the witnesses presented by DSS and the Guardian ad Litem, and the transcript of the proceeding was recorded and preserved. On appeal, Respondent-Father argues only that he was prejudiced because he could not respond to the testimony given at the hearing. However, he did not tender an affidavit or other offer of proof as to the content of his testimony and on appeal only states his absence prevented him from addressing “his ability to provide appropriate care for Kevin, his

availability and capacity to parent, his housing, his participation in his case plan, or his attempts to contact DSS.”

“In 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 C.A.B.*, 381 N.C. 105, 120, 871 S.E.2d 468, 479-80 (2022). When an affidavit is not available, a description of the expected testimony in appellate briefing can be sufficient to demonstrate prejudice to the satisfaction of this Court. *Id.*

Respondent-Father has provided no indication of the content of his testimony or how it would address the evidence supporting the trial court’s decision to terminate his parental rights: that Respondent-Father made minimal progress on his case plan including consistently missing visitation and permanency planning hearings and failing to obtain a mental health assessment, engage in treatment addressing his drug use, or obtain stable employment and housing. We cannot determine Respondent-Father’s case was prejudiced by the absence of his testimony. Because Respondent-Father has not demonstrated prejudice, we will not disturb the trial court’s ruling denying his motion to continue the termination hearing.

Conclusion

Accordingly, for the foregoing reasons, we affirm the order of the trial court.

IN RE: K.P.

Opinion of the Court

AFFIRMED.

Judges GORE and GRIFFIN concur.

Report per Rule 30(e).