

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA26-156

Filed 16 September 2026

Wake County, Nos. 25JA000288-910, 25JA000289-910

IN THE MATTER OF: A.J.J., C.T.J.

Appeal by respondent mother from order entered 4 November 2025 by Judge Ashleigh S. Parker in Wake County District Court. Heard in the Court of Appeals 26 August 2026.

Candler Law Group by Emily Sutton Dezio, for the respondent-appellant-mother.

Wake County Health and Human Services by David F. Hord, IV, and Mary Boyce Wells, for the petitioner-appellee.

Administrative Office of the Courts by Brittany T. McKinney, for appellee guardian ad litem.

TYSON, Judge.

Respondent-Mother appeals from the trial court's order adjudicating her children as neglected and dependent. We affirm.

I. Background

Respondent-Mother adopted “Andy” and “Caleb” as a single mother. *See* N.C. R. App. P. 42(b) (pseudonyms used to protect the minors’ identities). In 2023,

Respondent-Mother began serving a 300-month sentence in federal prison.

On 21 July 2025, Wake County Health and Human Services (“WCHHS”) received a report the children did not have a caretaker. Andy was ten years old and Caleb was fourteen years old. WCHHS obtained non-secure custody of the children on 1 August 2025.

Respondent-Mother failed to make appropriate arrangements for the care of the minor children during her incarceration. The children told the social worker “random people” were living in their home. The house was in active foreclosure. Someone had stolen the children’s birth certificates, passports, and social security cards. An unknown person had unenrolled them from school. The children were repeatedly wearing the same clothes and using Uber ride share for transportation.

Respondent-Mother was meeting individuals in prison, who were connecting her to other individuals to assist her in caring for the children. She was also seeking individuals online to help to provide care and supervision for them.

At Caleb’s eighth grade graduation, an unknown man claimed to be Caleb’s “uncle” and tried to take him away. Mr. Cheatham, a parent who was attending the graduation event, witnessed this incident and took Caleb with him out of concern for the child’s safety. Andy and Caleb are friends with the Cheatham children.

Ms. Cheatham contacted Respondent-Mother to ask if the boys could remain with her throughout the summer. Respondent-Mother agreed. At that time, they were residing with a cousin in Georgia and were staying in a motel. The children had

minimal clothing, their shoes had holes in them, and they were eating only potato chips. Ms. Cheatham purchased clothing, beds, and other items for Andy and Caleb. The children had been in Ms. Cheatham's care since 13 July 2025. Respondent-Mother sent Ms. Cheatham a letter stating she wished for the children to remain in her care. On 2 September 2025, the trial court adjudicated the children as neglected and dependent. Respondent-Mother appeals

II. Issues

Respondent-Mother argues: (1) the trial court erred by finding and concluding Andy and Caleb were neglected and dependent; (2) WCHHS did not use reasonable efforts to prevent taking the children into custody; and, (3) Respondent-Mother's counsel was ineffective in defending the allegations the children were neglected and dependent.

III. Jurisdiction

This Court has jurisdiction over this appeal pursuant to N.C. Gen. Stat. § 7B-1001(a)(3) and N.C. Gen. Stat. § 7A-27 (2025).

IV. Dependency and Neglect

Respondent-Mother argues the trial court erred by finding and concluding the children are dependent and neglected juveniles. We disagree.

A. Standard of Review

Our Supreme Court has set forth the standard of review in an appeal from an adjudication of neglect, abuse, or dependency:

An appellate court reviews a trial court's adjudication to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law. Where no objection is made to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal. The trial court's adjudication of [the child] as a neglected [or dependent] juvenile receives de novo review because it is a conclusion of law. To apply de novo review in this context, we use the trial court's factual findings to draw our own legal conclusions, which we then freely substitute for the conclusions of the trial court.

In re L.C., 387 N.C. 475, 479-80, 915 S.E.2d 106, 110 (2025) (internal citations, quotation marks, and brackets omitted).

B. Analysis

A “dependent juvenile” 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. Gen. Stat. § 7B-101(9) (2025).

A “neglected juvenile” is defined, in pertinent, as one “whose parent, guardian, custodian, or caretaker . . . [d]oes not provide proper care, supervision, or discipline.”

N.C. Gen. Stat. § 7B-101(15) (2025). The trial court concluded the children were neglected under this portion of the statute. “[T]he extent to which a parent's incarceration . . . support[s] a finding of neglect depends upon an analysis of the

relevant facts and circumstances, *including the length of the parent's incarceration.*" *In re J.B.*, 379 N.C. 233, 240, 864 S.E.2d 285, 290 (2021) (emphasis supplied).

The unchallenged findings of fact show Respondent-Mother made no safe, consistent, and appropriate plan of care for her minor children when she left for prison. The evidence showed "random" people were living in the home with the children, the home was in active foreclosure, and an unknown person had stolen their identification documents and unenrolled them from school. The children could not recall when they were last seen by a physician.

Evidence was presented to show the children were living in a motel in Georgia with a cousin during some portion of the summer of 2025, prior to moving and living with the Cheathams. Ms. Cheatham received a letter from Respondent-Mother, which purportedly gave her a "power of attorney." However, when she took the children to the doctor, she learned it was not valid. Ms. Cheatham did not have authority to make educational or healthcare decisions for the children. WCHHS filed the neglect and dependency petitions on 1 August 2025.

The children were in Ms. Cheatham's care, pursuant to Respondent-Mother's permission, when the petitions were filed and at the time of the hearing, and they appeared to be doing well. They came into Ms. Cheatham's care due to happenstance and remained with her due to the Cheathams' generous willingness to care for them, and not by any act of Respondent-Mother to seek an appropriate and safe arrangement for them.

However, Ms. Cheatham remained unable to adequately care for them without authority to make medical and educational decisions. Evidence was also presented to show the children were not enrolled in school, Caleb has an allergy that requires an EpiPen, and Andy has history of a heart murmur. The trial court properly concluded the children were dependent and neglected. This argument is overruled.

V. Reasonable Efforts

Respondent-Mother argues WCHHS “did not use reasonable efforts to prevent taking the children into their custody” when the children were in the care of Ms. Cheatham at the time WCHHS received the report. According to WCHHS, the only problem with Ms. Cheatham continuing to care for the children was the power of attorney signed by Respondent-Mother was “not legally binding” because it listed too many individuals. Respondent-Mother asserts WCHHS did not attempt to remedy this issue or discuss it with Respondent-Mother or her attorney.

To support her argument, Respondent-Mother cites N.C. Gen. Stat. §§ 7B-300 and 7B-302 (2025), statutes which govern the rules and procedures a county department of social services must follow to assess an abuse, neglect, or dependency report and to take a child into non-secure custody or remove the child from the home. None of the statutes or the case Respondent-Mother cites pertain to “reasonable efforts.”

Respondent-Mother’s argument is misplaced. Her argument pertains to the Non-Secure Custody Order, which is not before this Court and not subject to appellate

review. *See* N.C. Gen. Stat. § 7B-1001 (2025) (statute does not provide a right to appeal from a non-secure custody order). This argument is dismissed.

VI. Ineffective Assistance of Counsel

Respondent-Mother argues she received ineffective assistance of counsel, because her attorney made little attempt to understand her client’s perspective, failed to request the trial court to deny the petition, and she did not cross-examine witnesses or make objections at the hearing.

“To prevail on a claim of ineffective assistance of counsel, a respondent must show that [(1)] counsel’s performance was deficient and [(2)] the deficiency was so serious as to deprive [her] of a fair hearing.” *In re G.G.M.*, 377 N.C. 29, 41, 855 S.E.2d 478, 487 (2021) (citation omitted). “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.” *Id.* (citations omitted). This burden is “a heavy one for a party to bear.” *In re L.N.H.*, 382 N.C. 536, 541-42, 879 S.E.2d 138, 143 (2022) (citations omitted).

Respondent-Mother claims, while her attorney made an oral motion to continue the hearing to secure Respondent-Mother’s appearance, she failed to argue Respondent-Mother had a constitutional right to appear at the hearing. She asserts the failure to raise the constitutional right before the trial court waives *de novo* appellate review of the denial of the motion to continue and results in appellate review under an abuse of discretion standard. *See In re B.E.*, 381 N.C. 726, 731, 874

S.E.2d 524, 530 (2022) (citation omitted). Respondent-Mother has cited no case law to support the assertion that a parent has a constitutional right to attend an adjudication hearing. Furthermore, she has not challenged the trial court's denial of the motion to continue. This argument is dismissed.

Respondent-Mother also argues counsel's assistance was ineffective because counsel failed to raise an issue regarding the scheduling of the hearing. During the 7 August 2025 non-secure custody hearing, the adjudication was scheduled for 9 September 2024 and not 2 September, the day the hearing was held. Respondent-Mother asserts "it was possible [she] would have been allowed to attend the hearing had there been more time to schedule her appearance." This mere "possibility" does not meet the high burden required to show ineffective assistance of counsel. *In re L.N.H.*, 382 N.C. at 541-42, 879 S.E.2d at 143.

Respondent-Mother also asserts her trial counsel should have sought a Writ of Habeas Corpus *Ad Testificandum* to ensure Respondent-Mother's appearance, but "state court judges cannot interfere with the custody and detention of individuals held pursuant to federal authority." *Chavez v. McFadden*, 374 N.C. 458, 470-71, 843 S.E.2d 139, 149 (2020).

Finally, Respondent-Mother argues her counsel's silence at the adjudication hearing constituted ineffective assistance. Her counsel failed to object to testimony presented at the hearing, cross-examine witnesses, or present any evidence. "[E]ven if we were to [pre]sume the silence of [Respondent-Mother's] counsel at adjudication

was deficient performance, [she] cannot demonstrate [she] [was] deprived of a fair hearing or that but for counsel's performance, there would have been a different result in the proceedings." *In re N.N.*, 296 N.C. App. 159, 171, 907 S.E.2d 430, 439-40 (2024) (citation and internal quotation marks omitted). This argument is overruled.

VII. Conclusion

The trial court did not err in adjudicating Andy and Caleb as neglected and dependent juveniles. Respondent-Mother's other arguments are without merit. The order of the trial court is affirmed. *It is so ordered.*

AFFIRMED.

Judges STROUD and MURRY concur.

Report per Rule 30(e).