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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-302

Filed 18 November 2026

Watauga County, No. 25JA001022-940

IN THE MATTER OF: S.L.P.

Appeal by Respondent-Mother from order entered 10 December 2025 by Judge Matthew J. Rupp in Watauga County District Court. Heard in the Court of Appeals 15 September 2026.

Parent Defender Annick Lenoir-Peek, by Senior Assistant Parent Defender J. Lee Gilliam, for Respondent-Appellant-Mother.

Anné C. Wright for Petitioner-Appellee Watauga County Department of Social Services.

N.C. Guardian Ad Litem Program, by Matthew D. Wunsche, for Appellee Guardian ad Litem.

CARPENTER, Judge.

Respondent-Mother appeals from an initial adjudication and disposition order entered 10 December 2025 (the "Order"), adjudicating Sonny[1] as a neglected juvenile. On appeal, Respondent-Mother argues the trial court erred by (1) appointing her a

[1] A pseudonym is used to protect the identity of the juvenile and for ease of reading. *See* N.C. R. App. P. 42(b) (2025).

Rule 17 guardian ad litem ("Rule 17 GAL") and (2) adjudicating Sonny as a neglected juvenile. After careful review, we vacate the Order and remand to the trial court for a new adjudication and disposition hearing.

I. Factual & Procedural Background

By way of background, Sonny was born to Respondent-Mother and Father in June 2020. In January 2022, the trial court originally adjudicated Sonny and his sister[2] as neglected juveniles based on Respondent-Mother's stipulations. At the time, Respondent-Mother was struggling to care for her children because of poor mental health and abuse inflicted by her father, which included an attempt to kill her. In May 2022, the trial court entered a final permanency planning order, which returned Sonny to Father's custody, terminated the trial court's juvenile jurisdiction, and transferred the case to the civil custody docket. During the 2022 hearings, Respondent-Mother had been appointed a Rule 17 GAL.

Three years later, in June 2025, the district court[3] held a consent custody hearing with Respondent-Mother and Father. During the hearing, the district court conducted an inquiry into Respondent-Mother's competency and determined that:

> Pursuant to the terms of the May 2022 [permanency planning order], the Court made inquiry into whether Defendant should have a [Rule 17] GAL appointed. Based on representations by Defendant's attorney, who had been her appointed [Rule 17] GAL in the juvenile proceeding, *the*

[2] Sonny's sister is not party to this appeal.

[3] We use "district court" throughout to refer to the civil custody proceedings.

> *Court finds that appointment of a [Rule 17] GAL is not necessary*.

(emphasis added). The district court entered an order (the "Consent Order"), granting Respondent-Mother and Father joint legal custody, with Father maintaining primary physical custody. In the Consent Order, Respondent-Mother received unsupervised visitation with Sonny every other weekend and split holidays.

Shortly after entry of the Consent Order, the Watauga County Department of Social Services ("DSS") received a new report alleging that Respondent-Mother was neglecting Sonny. In August 2025, DSS filed a juvenile petition alleging Sonny was a neglected juvenile because of Respondent-Mother's lack of stable housing, inability to provide for Sonny's basic needs, substance abuse issues, inability to protect Sonny from his maternal grandfather, and resistance to DSS intervention.

During a November 2025 hearing, the trial court appointed Respondent-Mother a Rule 17 GAL without notice or inquiry. Respondent-Mother did not receive notice prior to the hearing that a Rule 17 GAL might be appointed, and there is no record evidence the trial court conducted an inquiry into Respondent-Mother's competency. Thereafter, the trial court adjudicated Sonny as a neglected juvenile and determined Sonny's best interests would be served by granting primary physical custody to Father, legal custody to DSS, and four hours per week of supervised visitation to Respondent-Mother. Respondent-Mother timely appealed.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(2) and 7B-1001(a)(3) (2025).

III. Issues

The issues on appeal are whether the trial court erred by: (1) appointing Respondent-Mother a Rule 17 GAL without notice and inquiry; and (2) adjudicating Sonny as a neglected juvenile.

IV. Analysis

Respondent-Mother argues the trial court erred by appointing her a Rule 17 GAL without proper notice, inquiry, and evidence of incompetency. She further contends the trial court deprived her of the fundamental right to conduct her own litigation. Having failed to preserve the issue for appeal, Respondent-Mother requests this Court invoke Rule 2 to review her argument.

A. Preservation & Rule 2

"Our Courts have consistently stated, a constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal." *In re A.T.*, 301 N.C. App. 331, 335, 923 S.E.2d 841, 845 (2025) (cleaned up). Even so, this Court has the discretion to vary the requirements of the appellate rule under Rule 2:

> To prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of any of these rules in a case pending before it upon

> application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

N.C. R. App. P. 2 (2025); *see also State v. Bursell*, 372 N.C. 196, 201, 827 S.E.2d 302, 306 (2019) ("A decision to invoke Rule 2 and suspend the appellate rules is always a discretionary determination." (cleaned up)).

" '[T]he exercise of Rule 2 was intended to be limited to occasions in which a fundamental purpose of the appellate rules is at stake, which will necessarily be rare occasions.' " *State v. Griffin*, 298 N.C. App. 85, 93, 914 S.E.2d 8, 13 (2025) (alteration in original) (quoting *State v. Hart*, 361 N.C. 309, 316, 644 S.E.2d 201, 205 (2007)). "[W]hether a particular case is one of the rare 'instances' appropriate for Rule 2 review . . . must necessarily be made in light of the *specific circumstances of individual cases and parties*, such as whether 'substantial rights of an appellant are affected.' " *Id.* at 93, 914 S.E.2d at 13 (emphasis in original) (quoting *State v. Campbell*, 369 N.C. 599, 603, 799 S.E.2d 600, 602 (2017)). "[P]recedent cannot create an automatic right to review via Rule 2. Instead, whether an appellant has demonstrated that his matter is the rare case meriting suspension of our appellate rules is always a discretionary determination to be made on a case-by-case basis." *Campbell*, 369 N.C. at 603, 799 S.E.2d at 603 (citing *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 196, 657 S.E.2d 361, 364 (2008); *Hart*, 361 N.C. at 315–17, 644 S.E.2d at 204–06; *Steingress v. Steingress*, 350 N.C. 64, 66, 511 S.E.2d. 298, 299–300 (1999)).

Although precedent cannot create an automatic right to review via Rule 2, analogous cases are instructive. *See Campbell*, 369 N.C. at 603, 799 S.E.2d at 603. For instance, in *In re A.T.*, this Court invoked Rule 2. *See* 301 N.C. App. at 335, 923 S.E.2d at 846. In that case, the record suggested the trial court *sua sponte* appointed the father a Rule 17 GAL during a continuance hearing, depriving him of an opportunity to object. *See id.* at 335, 923 S.E.2d at 846. Like the father in *In re A.T.*, the trial court appointed Respondent-Mother a Rule 17 GAL without proper notice and inquiry at an adjudication hearing in August 2025. Respondent-Mother had not required the services of a Rule 17 GAL for three years. Notably, weeks before the August 2025 hearing, the district court deemed Respondent-Mother competent to proceed without a Rule 17 GAL at the express recommendation of her former Rule 17 GAL.

In light of the specific circumstances of Respondent-Mother's case, discussed in more detail below, Respondent-Mother's case presents one of the "rare occasions" warranting Rule 2 review. *See Griffin*, 298 N.C. App. at 93, 914 S.E.2d at 13. Thus, in our discretion, we invoke Rule 2 to review the merits of Respondent-Mother's argument. *See* N.C. R. App. P. 2.

B. Rule 17 GAL

"[T]rial court decisions concerning both the appointment of a guardian ad litem and the extent to which an inquiry concerning a parent's competence should be conducted are reviewed on appeal using an abuse of discretion standard." *In re*

T.L.H., 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citing *In re M.H.B.*, 192 N.C. App. 258, 261, 664 S.E.2d 583, 585 (2008)). "An 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." *Id.* at 107, 772 S.E.2d at 455 (cleaned up).

"A trial court may appoint a Rule 17 GAL for a parent who is incompetent during adjudicatory and termination proceedings." *In re K.R.*, __ N.C. App. __, __, 931 S.E.2d 270, 278–79 (2026) (citing N.C. Gen. Stat. §§ 7B-602(c) (2025), 7B-1101.1(c) (2025), 35A-1101(7) (2025) (defining incompetent adult)). "[E]vidence of mental health problems is not *per se* evidence of incompetence to participate in legal proceedings." *In re J.R.W.*, 237 N.C. App. 229, 234, 765 S.E.2d 116, 120 (2014) (citations omitted). Furthermore, "neither mental health limitations nor a low IQ constitute *per se* evidence of a lack of competency for purposes of Rule 17." *In re Q.B.*, 375 N.C. 826, 836, 850 S.E.2d 898, 904 (2020) (citations omitted).

A trial court " 'should always keep in mind that the appointment of a guardian ad litem will divest the parent of their fundamental right to conduct his or her litigation according to their own judgment and inclination.' " *In re K.R.*, __ N.C. App. at __, 931 S.E.2d at 279 (quoting *In re J.A.A.*, 175 N.C. App. 66, 71, 623 S.E.2d 45, 48 (2005)). Therefore, a trial court abuses its discretion when it appoints a Rule 17 GAL for a respondent-parent, and the record does not show prior notice and an opportunity

to be heard.[4] *See id.* at __, 931 S.E.2d at 279; *In re A.T.*, 301 N.C. App. at 336–37, 923 S.E.2d at 847.

Here, the record reveals the trial court appointed Respondent-Mother a Rule 17 GAL without notice and inquiry. During the adjudication hearing, the trial court did not inquire into whether a Rule 17 GAL was warranted. While it may be true that Respondent-Mother required a Rule 17 GAL in prior proceedings due to mental illness and cognitive disabilities, it had been three years since she required the services of a Rule 17 GAL. *See In re Q.B.*, 375 N.C. at 836, 850 S.E.2d at 904. Moreover, weeks before the adjudication hearing, the district court deemed Respondent-Mother competent to proceed without a Rule 17 GAL based on the express recommendation of her former Rule 17 GAL. By failing to inquire into Respondent-Mother's competency or state the basis for the appointment on the record, the trial court deprived Respondent-Mother of notice and an opportunity to be heard before abridging her fundamental right to direct her own litigation. *See In re K.R.*, __ N.C. App. at __, 931 S.E.2d at 279; *In re A.T.*, 301 N.C. App. at 336–37, 923 S.E.2d at 847.

[4] In *In re K.R.*, this Court affirmed the trial court's appointment of a Rule 17 GAL for a respondent-parent. *See In re K.R.*, __ N.C. App. at __, 931 S.E.2d at 279. That case is distinguishable because the respondent-parent failed to include a transcript of the hearing where the trial court appointed a Rule 17 GAL. *See id.* at __, 931 S.E.2d at 279. Furthermore, the respondent-parent did not argue on appeal that the trial court deprived her of notice, and "the cold record show[ed] the trial court conducted an independent inquiry . . . ." *See id.* at __, 931 S.E.2d at 279.

On the record before us, the trial court abused its discretion by arbitrarily appointing Respondent-Mother a Rule 17 GAL. *See id.* at __, 931 S.E.2d at 279; *In re A.T.*, 301 N.C. App. at 336–37, 923 S.E.2d at 847; *In re T.L.H.*, 368 N.C. at 107, 772 S.E.2d at 455. Thus, we vacate the Order and remand for a new adjudication and disposition hearing. Having resolved the dispositive issue, this Court need not address Respondent-Mother's remaining argument on appeal.

V. Conclusion

For the foregoing reasons, we vacate the Order and remand for a new adjudication and disposition hearing. At the hearing, the trial court may inquire into the need to appoint Respondent-Mother a Rule 17 GAL if there exists a substantial question as to her competency. *See In re A.T.*, 301 N.C. App. at 341, 923 S.E.2d at 849.

VACATED AND REMANDED.

Judges STROUD and GORE concur.

Report per Rule 30(e).