IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-114

Filed: 7 July 2015

Wilkes County, Nos. 12 JT 154-56

IN THE MATTER OF: T.F.L., S.D.L., and B.A.N.L.

Appeal by Respondent-mother from order entered 5 November 2014 by Judge William F. Brooks in Wilkes County District Court. Heard in the Court of Appeals 8 June 2015.

No brief filed for Petitioner Wilkes County Department of Social Services.

Penry | Riemann pllc, by Neil A. Riemann, for Guardian ad Litem.

Mark L. Hayes for Respondent-mother.

STEPHENS, Judge.

Respondent-mother ("Respondent") appeals from the district court's order terminating her parental rights to her minor children "Betsy," "Sara," and "Theresa" (collectively, "the children").[1] Specifically, Respondent contends that she did not receive effective assistance of counsel at the termination hearing because her attorney abstained from participating and effectively withdrew from the proceedings after Respondent failed to appear. Alternatively, Respondent argues that the district

[1] For the purpose of protecting their privacy, in accordance with Rule 3.1 of our Rules of Appellate Procedure, we refer to the juveniles by pseudonyms throughout this opinion.

court erred in denying her attorney's motion for a continuance and failing to conduct an inquiry into his efforts to communicate with Respondent before allowing him to "effectively withdraw" from representing her. After thorough review, we hold that Respondent's attorney did not provide ineffective assistance of counsel and did not withdraw from the representation, and that the district court did not err in failing to grant a continuance or conduct an inquiry. Consequently, we affirm the district court's order terminating Respondent's parental rights.

I. Facts and Procedural History

On 10 December 2012, the Wilkes County Department of Social Services ("DSS") filed juvenile petitions alleging that the children were neglected and dependent. The petitions alleged that four-year-old Betsy and two-year-old Sara were found alone and unsupervised in the parking lot of their apartment complex. Respondent was found asleep in her apartment with one-year-old Theresa. She admitted to taking an anti-depressant and a sleeping pill. DSS obtained nonsecure custody of all three children. At the time of this incident, the children's father was incarcerated.

On 22 January 2013, the children were adjudicated neglected and dependent. Respondent entered into a "Family Service Case Plan" with DSS to address the issues that led to the children's removal. Specifically, Respondent's case plan required her to: take advantage of community resources including mental health care providers

and therapists for the children; participate in random drug screens; maintain at least twice monthly contact with her DSS social worker; maintain stable housing; attend and complete parenting classes; obtain a substance abuse assessment and participate in recommended follow-up counseling and treatment; and obtain a psychological evaluation and participate in any recommended counseling and treatment. In the months that followed, Respondent successfully completed almost all of the requirements of her case plan. The children's father also entered into a case plan after his release from prison and complied with most of its requirements. As a result, the children were placed back in their parents' home on a trial basis on 25 October 2013.

On 23 January 2014, DSS removed the children from their parents' home when it was discovered that they were living without adequate food, heat, and electricity, that they were being subjected to inappropriate discipline, and that Respondent and the children's father had separated. On 17 April 2014, the district court entered an order ceasing reunification efforts with Respondent and changed the permanent plan for the children to adoption.

On 16 June 2014, DSS filed a petition to terminate Respondent's parental rights to the children. The petition alleged that Respondent's rights were subject to termination on the grounds of neglect, willfully leaving the children in placement outside the home for more than 12 months without making reasonable progress, and willfully failing to pay a reasonable portion of the children's care for six months.

A hearing on the petition was conducted on 24 October 2014. Respondent was not present at the hearing. Respondent's attorney informed the district court that Respondent had never previously missed a court date and had not informed him that she would not attend. After noting he had not spoken with Respondent in "a few weeks," Respondent's attorney made a motion to continue. The court held the matter open for a few minutes but, when Respondent did not appear, denied the motion, reasoning:

> I understand certainly the position of Counsel for the Respondents and I appreciate that. I've been in that position before, but obviously these folks have not made any effort to contact today anyone regarding these matters. They are not present. They have not made any contact recently about any delays so, unfortunately, I'm going to have to deny the motion of both the Mother and the Father through their respective Counsel.

After the motion to continue was denied, Respondent's attorney remained present in the courtroom but did not actively participate in the termination hearing. After the court took judicial notice of all the previous orders and filings in the case, DSS presented one witness, Respondent's social worker Brenda Barber, who testified based on reports by the children's Guardian *ad Litem* ("GAL") and therapists as well as her own familiarity with Respondent's case file. Barber testified that the reason for the children's removal after the unsuccessful trial placement was based on DSS's conclusion that Respondent was incapable of providing suitable housing for the children. As Barber explained, in addition to the fact that Respondent was

forced to move several times in quick succession before, during, and after the trial placement,

> [w]e had reports with regard to the children were sleeping on the floor in the cold. There was a lack of heat in the home. The children were going to school, day-care and school, not clean, wearing the same clothes multiple days in a row. We had report[s] from the day-care telling us that the two younger children . . . had come to school three days in a row with the same clothes and they were smelly, soiled, faces were dirty, the hair was matted to their head and that was not the first occasion, but when they tried to clean the children up that [Respondent] got very upset with them and was very offended by them doing that so rather than to offend [Respondent] they just made stuff up but they continued to clean the children up.

Barber testified further that

> [t]here was [a] report of inappropriate discipline. [Betsy] reported that her daddy had whipped her really hard. The uncle [with whom Respondent moved in after being evicted shortly after the trial placement began] would slap all, all of them, if they didn't do as he had instructed and [Respondent] admitted to spanking the children as well. So there was inappropriate discipline in the home by all three adults.

Barber also testified that the children's GAL had reported that Respondent had told Betsy that the reason they were no longer in their home together was Betsy's fault, and that Betsy's therapist had reported that Betsy had recently stated that if she ever found a pot of gold, "[s]he would buy a grocery store so she would make sure that both she and her siblings would have food." In addition, Barber testified that since the children were removed from the trial placement, their concerns about food had

decreased and they had displayed evidence of strong bonds with the foster parents who sought to adopt them.

Respondent's attorney did not cross-examine Barber or object at any time during her testimony, nor did Respondent's attorney present any evidence on her behalf or make any legal arguments against termination. Instead, at the conclusion of the adjudication phase of the hearing, Respondent's attorney stated: "I really don't have anything to add since the mother didn't show up today I'll kind of leave it at that." During the hearing's disposition phase, Respondent's attorney told the court,

> Your Honor, I just have to agree with [DSS] that this is indeed a sad case. We were so optimistic for so long in this case. Past almost two years we've been coming. It's been hit or miss but overall I think there's been a sense of optimism that these parents would be able to take these kids back in their custody and take care of them. I've worked with them for so long, I have no doubt that these parents do love these children.

On 5 November 2014, the district court entered an order granting DSS's petition to terminate Respondent's parental rights to the children. In its factual findings, the court found Respondent had failed to "[m]aintain adequate and appropriate housing" and that, "[d]uring the three (3) month period of the trial placement, [Respondent] experienced a recurrence of many of the problems which had plagued [her] prior to [DSS's] involvement" in the case based on its findings that Respondent had been evicted on one occasion and forced to move on at least one other occasion; that Respondent had exposed the children to "an environment characterized by adult

disputes" and to "a home without appropriate heat and electricity;" and that Respondent had failed to properly feed, nurture, clean, bathe, and clothe the children. The court further found:

> Since being placed in foster care, and since the end of the trial placement, the children have improved significantly. This is particularly true in the area of the children's concern regarding food. The two (2) older children have historically demonstrated a concern about there not being sufficient food or that they would have appropriate food. These concerns, however, have diminished since the children have been returned to foster care.

Based on these findings of fact, the district court entered its legal conclusion that DSS had shown by clear and convincing evidence that Respondent's parental rights to the children should be terminated based on the grounds of neglect, willfully leaving the children in placement outside the home for more than 12 months without making reasonable progress, and willfully leaving the children in DSS custody for a continuous period of six months without paying a reasonable portion of the cost of their care. The court's order also terminated the parental rights of the children's father. On 19 November 2014, Respondent filed notice of appeal to this Court.

II. Analysis

A. Ineffective assistance of counsel

Respondent argues first that she received ineffective assistance of counsel ("IAC") because her attorney did nothing to advocate on her behalf during the termination hearing. We disagree.

At a termination hearing, "[t]he parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right." N.C. Gen. Stat. § 7B-1101.1(a) (2013). This statutory right "includes the right to effective assistance of counsel." *In re Bishop*, 92 N.C. App. 662, 665, 375 S.E.2d 676, 678 (1989). "To prevail in a claim for ineffective assistance of counsel, [the] respondent must show: (1) her counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) her attorney's performance was so deficient she was denied a fair hearing." *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005). "A parent must also establish [she] suffered prejudice in order to show that [she] was denied a fair hearing." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909 *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009).

In the present case, Respondent contends that her attorney did not fulfill his basic duty to serve as an advocate on her behalf. *See, e.g.*, *In re S.N.W.*, 204 N.C. App. 556, 560, 698 S.E.2d 76, 79 (2010) ("It is well established that attorneys have a responsibility to advocate on the behalf of their clients."). Specifically, Respondent argues that by failing to present any evidence or arguments on her behalf, and by failing to cross-examine Barber or object to leading questions and hearsay answers offered during Barber's testimony for DSS, Respondent's attorney performed deficiently at the termination hearing. Respondent argues further that her attorney's deficient performance was so prejudicial as to deny her a fair hearing because, in

Respondent's view, much of Barber's testimony at the termination hearing regarding the lack of heat, electricity, food, and proper hygiene during the children's trial placement relied on reports from the GAL and Betsy's therapist and thus should have been excluded as inadmissible hearsay. Respondent insists that without this testimony, there would have been no competent evidence to support the factual findings on which the district court based its legal conclusion that grounds existed to terminate her parental rights to the children based on neglect as defined by N.C. Gen. Stat. § 7B-1111(a)(1).

Even assuming *arguendo* that Respondent is correct in her characterization of Barber's testimony at the termination hearing, this argument fails. On the one hand, this Court has previously recognized that in a proceeding to terminate parental rights, DSS records are "admissible under the business records exception to the hearsay rule." *In re Smith*, 56 N.C. App. 142, 148, 287 S.E.2d 440, 444, *cert. denied*, 306 N.C. 385, 294 S.E.2d 212 (1982). In *Smith*, the respondent argued that the testimony DSS offered from two social workers at the hearing terminating her parental rights should have been excluded as inadmissible hearsay because neither of the social workers had firsthand knowledge of the underlying facts of her case, given that they had not been assigned to it until after the petition for termination had been filed. *Id.* However, because both of the social workers "had familiarized [themselves] with the case history of the client based on the records kept by [DSS],"

we rejected this argument and held that "the court was correct in recognizing that this case could not be decided in a vacuum. The procedural and factual history of the case was relevant and necessary to a full and fair determination of the issues." *Id.*

Similarly here, it is clear from the record and the transcript of the termination hearing that the portions of Barber's testimony Respondent objects to as incompetent hearsay were based on reports from the children's GAL and Betsy's therapist that are referenced directly and repeatedly in the permanency planning and review orders contained in the court filings and the DSS records compiled in conjunction with the underlying neglect and dependency proceedings involving the children. The termination order makes clear that the district court took judicial notice of all prior orders and filings pertaining to this matter, and Respondent makes no argument that it erred in doing so, or that these prior court filings are themselves hearsay or otherwise inadmissible. Instead, Respondent's argument that the court's findings are unsupported by competent evidence relates solely to the admissibility of Barber's testimony. However, this Court has long recognized that "[i]n a nonjury trial, if incompetent evidence is admitted and there is no showing that the judge acted on it, the trial court is presumed to have disregarded it." *In re Oghenekevebe*, 123 N.C. App. 434, 438, 473 S.E.2d 393, 397 (1996). Moreover, it is well established that a parent whose rights have been terminated cannot prevail on a claim for ineffective assistance of counsel where the record demonstrates that there is overwhelming

evidence to support at least one ground for termination. *See, e.g.*, *In re S.C.R.*, 198 N.C. App. at 531, 679 S.E.2d at 909 (rejecting the respondent's ineffective assistance of counsel claim where the respondent was unable to demonstrate any prejudice resulting from allegedly deficient representation at least in part because the district court's findings of fact adequately supported its legal conclusion that grounds existed for terminating his parental rights); *In re Dj.L.*, 184 N.C. App. 76, 87, 646 S.E.2d 134, 142 (2007) (rejecting the respondent's ineffective assistance of counsel claim where it was "difficult to see a defense on which [the] respondent could have prevailed" in light of the overwhelming evidence supporting at least one ground for terminating her parental rights); *In re J.A.A.*, 175 N.C. App. 66, 74, 623 S.E.2d 45, 50 (2005) (rejecting the respondent's ineffective assistance of counsel claim where the respondent failed to demonstrate that her trial counsel's allegedly deficient representation denied her a fair trial in light of the fact that "the record contain[ed] overwhelming evidence supporting termination of [the] respondent's parental rights").

In the present case, our review of the record demonstrates ample support for the factual findings the district court relied on to support its legal conclusion that grounds existed to terminate Respondent's parental rights, irrespective of Barber's testimony, on the basis of neglect. Consequently, we conclude that Respondent cannot show that her trial attorney's allegedly deficient representation denied her a fair trial or prejudiced the outcome of this proceeding. This argument is without merit.

B. Denial of Respondent's motion for a continuance and failure to inquire into Respondent's communication with her attorney

Respondent argues next that the district court erred by denying her attorney's motion for a continuance and allowing her attorney to effectively withdraw from representing her without first conducting an inquiry into his communications with Respondent. We disagree.

(1) Background law

We note first that we know of no case in which this Court has recognized or relied upon the concept of an "effective withdrawal" to remand an order terminating a parent's rights. Respondent cites no case that directly supports her position but relies instead on our prior holdings in *In re S.N.W.*, 204 N.C. App. 556, 559, 698 S.E.2d 76, 78 (2010) and *In re D.E.G.*, __ N.C. App. __, 747 S.E.2d 280 (2013). Both those cases addressed claims of ineffective assistance of counsel stemming from a district court's decision to allow a respondent's attorney to refrain from participating in a termination hearing when the respondent failed to appear.

In *S.N.W.*, the hearing to terminate the respondent's parental rights was initially continued three times because "[p]arents needs [sic] time to prepare with counsel" before the matter was finally heard. 204 N.C. App. at 557, 698 S.E.2d at 77. The respondent did not appear at the termination hearing and his attorney, who was not appointed to represent him until three weeks after DSS filed its motions to terminate his parental rights, reported having had no contact with his client during

the course of the representation other than a single phone message from his client which he did not return. *Id.* at 557-58, 698 S.E.2d at 77. During the termination hearing, the respondent's attorney informed the court that:

> [DEFENSE COUNSEL]: He's not kept with me, Your Honor. I have not—
>
> THE COURT: What I'm gonna do is—is not—not let you out of the case, but allow you not to participate.
>
> [DEFENSE COUNSEL]: And I understand that, Your Honor.
>
> THE COURT: And we'll note that the [respondent] has not been in communication with [his attorney].

Id. at 558, 698 S.E.2d at 77. In addition, the respondent's attorney submitted a fee application to the court stating that he had spent a total of 1.1 hours working on the case over a span of four months. *See id.* at 560, 698 S.E.2d at 78. As we explained, under such "unique" circumstances, "the [district] court should have inquired further about [counsel's] efforts: (1) to contact [the r]espondent; (2) to protect [the r]espondent's rights; and (3) to ably represent [the r]espondent." *Id.* at 559, 698 S.E.2d at 78. While recognizing that "a lawyer cannot properly represent a client with whom he has no contact," and that "a finding of ineffective assistance of counsel will generally not be made where the purported shortcomings of counsel were caused by the party," we held that the district court's failure to conduct an extended inquiry ran afoul of "procedural safeguards, including the right to counsel, [which] must be

followed to ensure the fundamental fairness of termination proceedings." *Id.* at 561, 698 S.E.2d at 79 (citation and internal quotation marks omitted). In so holding, we emphasized that

> [the r]espondent had more than one attorney assigned to him in this case, and . . . the termination hearing specifically was continued several times. It is not inconceivable that [the r]espondent may have been confused about what was required of him with regard to the termination proceedings or when he needed to appear in court. The lack of information in the record or transcript regarding counsel's attempts to contact his client, along with the lack of representation at the brief fifteen-minute hearing, precludes us from determining whether [the r]espondent received effective assistance of counsel, and if he was denied a fair hearing.

Id. at 560, 698 S.E.2d at 78-79. Therefore, we remanded the case for the district court to determine whether the respondent "was afforded . . . the proper procedures to ensure that his rights were protected[.]" *Id.* at 561, 698 S.E.2d at 79.

More recently, in *D.E.G.*, we held that the district court erred in *excusing* the respondent's counsel from *appearing* at a termination hearing. __ N.C. App. at __, 747 S.E.2d at 285-86. There, as a result of being incarcerated, the respondent had missed at least one review hearing during the underlying neglect and dependency proceeding that served as the basis for terminating his parental rights. *Id.* at __, 747 S.E.2d at 281. The summons with which DSS served the respondent, along with its petition to terminate his parental rights, indicated, *inter alia*, that if he was already represented by court-appointed counsel in the underlying proceeding, the same

lawyer would continue to represent him unless the court ordered otherwise, whereas if he did not have court-appointed representation but desired it, he should contact the attorney named in the summons who had been temporarily assigned to represent him. *Id.* at __, 747 S.E.2d at 282. The attorney named in the summons was the same attorney who had represented the respondent during the underlying neglect and dependency proceeding. *Id.* After the court granted a continuance to allow the respondent to complete an inpatient substance abuse program, both the respondent and his attorney failed to appear at the termination hearing. *Id.* Instead, the attorney for DSS informed the court that she had spoken with the respondent's attorney earlier in the day and that he had indicated he had not had any contact with his client and had asked DSS to ask the court to excuse him from representing the respondent at the termination hearing. *Id.* In response to this request, the court stated, "All right. Counsel for [the respondent] will be excused for absence or [sic] contact with [his] client[]." *Id.* Then, without any further inquiry, the court proceeded to conduct both the adjudication and dispositional portions of the termination hearing, which were completed in just over 30 minutes and resulted in the termination of the respondent's parental rights. *Id.*

On appeal, this Court followed a similar analysis to the one it previously conducted in *S.N.W.* and reached a similar result. We noted first that "[a]fter making an appearance in a particular case, an attorney may not cease representing his or her

client in the absence of (1) justifiable cause, (2) reasonable notice [to the client], and (3) the permission of the court." *Id.* at __, 747 S.E.2d at 284 (citation and internal quotation marks omitted). We also observed that although

> [t]he determination of counsel's motion to withdraw is within the discretion of the [district] court . . . [,] where an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion and must grant the party affected a reasonable continuance or deny the attorney's motion for withdrawal. As a result, before allowing an attorney to withdraw or relieving an attorney from any obligation to actively participate in a termination of parental rights proceeding when the parent is absent from a hearing, the [district] court must inquire into the efforts made by counsel to contact the parent in order to ensure that the parent's rights are adequately protected.

Id. (citations, internal quotation marks, and brackets omitted). In light of the respondent's attorney's failure to appear at the termination hearing, and the absence of any indication in the record that he had made any effort to notify the respondent of his intention to seek leave of court to withdraw from the representation or otherwise had any justifiable basis to request leave to withdraw, we held that the district court erred in excusing the respondent's attorney from attending and participating in the termination hearing. *Id.* at __, 747 S.E.2d at 284-85. Thus, because the record did not indicate whether the court had properly adhered to the basic procedural safeguards that assure parents in termination proceedings are fully afforded their right to counsel, we vacated the termination order and remanded the matter with instructions for the district court to "conduct a hearing for the purpose

of determining the extent, if any, to which [the respondent's attorney] had attempted to notify [the respondent] of his intentions to seek leave of court to withdraw from his representation of [the respondent] and whether he had justifiable cause for making that request." *Id.* at __, 747 S.E.2d at 286.

Earlier this year, we revisited these same issues in our decision in *In re M.G.*, __ N.C. App. __, 767 S.E.2d 436, *disc. review denied*, __ N.C. __, __ S.E.2d __ (2015), where we vacated and remanded an order terminating the respondent's parental rights because the district court allowed her attorney to withdraw from representing her before the termination hearing began without first conducting a full inquiry to determine whether her attorney had justifiable cause to withdraw and had provided reasonable notice of her intention to do so to the respondent. The respondent in that case had repeatedly failed to appear at hearings during the underlying abuse, neglect, and dependency ("A/N/D") proceeding that eventually led DSS to petition for termination of her parental rights. *Id.* at __, 767 S.E.2d at 438. Partially due to the respondent's inability to maintain stable housing, DSS encountered great difficulty in serving her with the summons and with notice of the date, time, and location of the termination hearing. *Id.* at __, 767 S.E.2d at 439. The district court appointed the same attorney who represented the respondent throughout the underlying A/N/D proceeding to represent her in the termination proceeding. *Id.* When the respondent failed to appear at the termination hearing, her attorney requested a continuance

and explained to the court that although she had had no recent contact with the respondent regarding the termination hearing, she was also representing the respondent in another A/N/D proceeding regarding one of her other children; that the respondent had come to court the previous day to attend a hearing in that matter; that that matter had been continued; and that the respondent might have gotten her court dates confused. *Id.* The court denied the motion to continue. *Id.* DSS then sought to conduct a permanency planning hearing before the termination hearing, which led the respondent's attorney to inquire:

> [DEFENSE COUNSEL]: Your Honor, then I don't know if I should withdraw or not because [the respondent] sort of maintains contact with me [as] she's coming through the other case. So, Your Honor, [unintelligible] at this point.
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> THE COURT: She knew to be here. Notice was given. We held the other case open from yesterday. So, I will allow you to withdraw.
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> [DEFENSE COUNSEL]: At least as to this—
>
> THE COURT: As to this hearing, yes.
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> [DEFENSE COUNSEL]: Would that be in regards to the TPR as well, Your Honor? Because I am in the same position. If the [c]ourt's not going to be inclined to continue that, this afternoon.
>
> THE COURT: I'm not going to be inclined to continue it. I'll hold it until we call it, however. Because I don't know how the rest of the docket is going to go.

Id. at __, 767 S.E.2d at 439-40. Later that afternoon, after conducting a permanency planning hearing, the court began the termination hearing and the respondent's attorney made another motion to continue. *Id.* at __, 767 S.E.2d at 440. When the court denied the motion, the respondent's attorney made a motion to withdraw, at which point the court inquired if she had been in contact with the respondent since the hearing in the other A/N/D matter earlier in the week. *Id.* The respondent's attorney replied that she had not, and explained that she did not have a phone number or current mailing address for her client. *Id.* The court granted her motion to withdraw, proceeded with the termination hearing, and subsequently entered an order terminating the respondent's parental rights. *Id.* However, when the respondent appealed to this Court, we held that because the record was "devoid of any evidence whatsoever that [she] received any notice [that her attorney] would seek to withdraw from her representation at the start of the [termination] hearing," the district court's failure to conduct a full inquiry before allowing the motion to withdraw "raise[d] the same questions of fundamental fairness" as the "failures to comply with basic procedural safeguards" that necessitated remand in both *S.N.W.* and *D.E.G. Id.* at __, 767 S.E.2d at 441.

(2) Application

In the present case, Respondent contends that her attorney's failure during the termination hearing to present evidence or arguments on her behalf or to cross-

examine Barber or object to any of her testimony amounted to an effective withdrawal from the representation without any prior notice to Respondent and that, in light of this Court's prior holdings in *S.N.W.* and *D.E.G.*, the district court's failure to grant a continuance or conduct an inquiry compels this Court to vacate the termination order and remand her case. We disagree. Our review of the record in this case demonstrates that despite superficial similarities between our aforementioned decisions and the present facts, Respondent's reliance on *S.N.W.* and *D.E.G.* is misplaced.

To be clear, this case simply does not raise the same concerns about basic procedural safeguards that so troubled this Court in *S.N.W.*, *D.E.G.*, and *M.G.* In those cases, the respondents not only failed to appear at their termination hearings but also had little-to-no involvement in their cases before that point due to their near-total lack of contact with their attorneys. In each case, that lack of contact resulted in the potential for substantial confusion regarding what was required of the respondent and when he or she needed to appear, raising concerns that the procedural safeguards that assure fundamental fairness in termination proceedings were not functioning properly. Those concerns were exacerbated further—to the point of constituting reversible error—when the district court conducted no inquiries before the respondents' attorneys were allowed to withdraw from representing them.

Here, however, Respondent's attorney appeared in court to represent her at the original adjudication and disposition hearing and at every subsequent stage of these proceedings, which Respondent also attended herself, covering an almost two-year period of time. When Respondent failed to appear at the termination hearing after having received proper notice, her attorney expressed his surprise and informed the court that he had remained in contact with her until "a few weeks" beforehand. Respondent complains that, in her absence, the district court should have granted her attorney's motion for a continuance based on *S.N.W.* and *D.E.G.*, but here again, we find the unique factual and procedural backgrounds of those cases inapposite to the present facts. Respondent also insists that her attorney was incapable of rendering effective assistance under these circumstances, but this argument fails in light of the preceding analysis and this Court's longstanding recognition that "[w]here the lack of preparation for trial is due to a party's own actions, the trial court does not err in denying a motion to continue." *In re Bishop*, 92 N.C. App. at 666, 375 S.E.2d at 679. Indeed, to hold, as Respondent urges, that an attorney renders ineffective assistance of counsel when he is unable to engage in a vigorous representation at a termination hearing because his longtime client has suddenly gone inexplicably absent, and cannot be consulted about how the representation should proceed, would establish a troubling precedent that respondents could easily exploit in future cases to thwart DSS's efforts by strategically electing not to appear at the termination

hearing and then pleading an IAC claim on appeal. Such a result would clearly undermine our General Assembly's intent to protect the best interests of the *children* involved in termination proceedings "to have a permanent plan of care at the earliest possible age" when their parents "have demonstrated that they will not provide the degree of care which promotes [their] healthy and orderly physical and emotional well-being." *See* N.C. Gen. Stat. § 7B-1100(1), (2) (2013).

Moreover, unlike in *S.N.W.* and *D.E.G.*, Respondent's attorney never sought the district court's permission to withdraw from the representation or to otherwise avoid participating in the termination hearing, and the court never explicitly excused him from doing so. In fact, the district court elicited his input at the close of the hearing's adjudication phase and again during its disposition phase. Although Respondent invites this Court to stretch its prior holdings beyond the unique circumstances present in *S.N.W.* and *D.E.G.* by characterizing her attorney's performance at the termination hearing as an "effective withdrawal," we decline to do so. Instead, we hold that the district court did not err in denying Respondent's motion for a continuance, or in declining to conduct the type of inquiry that is required when a parent who has had so little contact with her attorney throughout the termination proceedings as to raise serious questions about fundamental fairness and the proper functioning of procedural safeguards fails to appear at the termination

hearing. Accordingly, the order terminating Respondent's parental rights to the children is

AFFIRMED.

Chief Judge MCGEE and Judge DAVIS concur.

Report per Rule 30(e).