

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-878

Filed 05 July 2023

Union County, No. 20 JT 143

IN THE MATTER OF: J.S.

Appeal by respondent-mother from order entered 14 June 2022 by Judge William F. Helms, III, in Union County District Court. Heard in the Court of Appeals 12 June 2023.

*Perry, Bundy, Plyler & Long, LLP, by Ashley J. McBride, for Petitioner-Appellee Union County Division of Social Services.*

*North Carolina Administrative Office of the Courts, by GAL Appellate Counsel Matthew D. Wunsche, for Guardian ad Litem-Appellee.*

*Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for Respondent-Appellant-Mother.*

PER CURIAM.

Respondent-Mother appeals from an order (the “Order”) terminating her parental rights in J.S. (“Jaxon”).<sup>1</sup> For the reasons stated herein, we vacate the Order and remand for a new termination-of-parental-rights hearing.

**I. Factual & Procedural Background**

---

<sup>1</sup> A pseudonym is used to protect the identity of the juvenile and for ease of reading.

Jaxon was born in August 2020. On 21 August 2020, Union County Division of Social Services (“DSS”) obtained nonsecure custody of Jaxon and filed a petition alleging him to be a neglected and dependent juvenile. The petition alleged that both Jaxon and Respondent-Mother tested positive for amphetamine at Jaxon’s birth, and Respondent-Mother admitted to using methamphetamine during her pregnancy with Jaxon. Nursing staff at the hospital had concerns Respondent-Parents were not feeding Jaxon as directed. Respondent-Parents had three other children in DSS custody, all of whom had been adjudicated neglected and dependent in November 2019.

On 26 August 2020, a deputy clerk from the Union County Clerk of Superior Court’s Office appointed Tiffany Porter (“Ms. Porter”) as provisional counsel for Respondent-Mother. On 28 August 2020, the trial court entered an order concluding that Respondent-Mother was indigent and confirming the appointment of Ms. Porter as counsel. *See* N.C. Gen. Stat. § 7B-602 (2021) (“The court shall confirm the appointment of counsel if” the court is not required to dismiss the provisional counsel under subsections (1)–(4)).

On 15 December 2020, the trial court entered an order adjudicating Jaxon to be a neglected and dependent juvenile. Respondent-Mother was ordered to comply with her Out-of-Home Services Agreement.

Following a 7 April 2021 permanency planning hearing, the trial court entered an order on 1 May 2021, finding that Respondent-Mother was “not making adequate

progress within a reasonable period of time under the plan.” After a permanency planning hearing held on 3 August 2021, the trial court entered an order on 3 September 2021, changing the permanent plan to adoption with a secondary, concurrent plan of guardianship.

On 27 August 2021, DSS filed a petition to terminate Respondent-Mother’s parental rights to Jaxon.<sup>2</sup> DSS alleged grounds existed to terminate Respondent-Mother’s parental rights based on: (1) neglect; (2) willfully leaving Jaxon in foster care or placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to his removal; (3) willfully failing to pay a reasonable portion of the cost of care for Jaxon; (4) dependency; and (5) Respondent-Mother’s parental rights with respect to another child had been terminated involuntarily, and she lacked the ability or willingness to establish a safe home. *See* N.C. Gen. Stat. § 7B-1111(a)(1)–(3), (6), (9) (2021).

DSS’s petition came on for hearing on 1 December 2021, and Respondent-Mother and Ms. Porter were present. The hearing was continued until 11 January 2022 “due to time constraints.” At the 11 January 2022 hearing, Ms. Porter was present, and Respondent-Mother was absent. The hearing was continued until 2 February 2022 “due to the social worker being ill and unable to be present to testify.”

At the 2 February 2022 hearing, Ms. Porter was present, and Respondent-

---

<sup>2</sup> DSS also petitioned to terminate Respondent-Father’s parental rights and his rights were ultimately terminated, but he is not a party to this appeal.

Mother was not. The trial court continued the matter until 8 March 2022 “due to the mother of the juvenile being unavailable.” At a hearing held on 9 March 2022, both Respondent-Mother and Ms. Porter were present, and the trial court continued the hearing until 4 May 2022 “due to [Ms.] Porter and [Respondent-Mother needing] additional time to discuss the matter.”

On 7 April 2022, Ms. Porter filed a motion to withdraw as counsel for Respondent-Mother because Ms. Porter was leaving private law practice. On 8 April 2022, a deputy clerk from the Union County Clerk of Superior Court’s Office entered an order appointing attorney Corey McManus (“Mr. McManus”) as provisional counsel for Respondent-Mother. On 18 April 2022, the trial court entered an order allowing Ms. Porter’s motion to withdraw as counsel for Respondent-Mother and appointing “[Mr. McManus] . . . in substitute” for Respondent-Mother.

The petition to terminate Respondent-Mother’s parental rights came on for hearing on 4 May 2022. Respondent-Mother did not appear for this hearing. Mr. McManus made a motion to continue, stating:

I was substituted in for Ms. Porter. I think I may have been substituted in three or four weeks ago. I haven’t had any contact with my client. I don’t know why she’s not here, but I’ve never had any contact with her. Like I said, I was substituted in, so I would make a motion to continue on that basis.

The trial court denied the motion to continue. Mr. McManus then made a motion to withdraw as counsel for Respondent-Mother, and the trial court allowed the motion.

On 14 June 2022, the trial court entered the Order adjudicating the existence of all grounds alleged by DSS. The trial court also concluded it was in Jaxon's best interests that Respondent-Mother's parental rights be terminated, *see* N.C. Gen. Stat. § 7B-1110(a) (2021), and terminated her rights. Respondent-Mother appeals from the Order.

## **II. Jurisdiction**

This Court has jurisdiction to address Respondent-Mother's appeal from the Order terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021) and N.C. Gen. Stat. § 7A-27(b)(2) (2021).

## **III. Issue**

Respondent-Mother's sole argument on appeal is that the trial court erred by allowing both Ms. Porter and Mr. McManus to withdraw from representation without their providing proper notice of intent to withdraw.

## **IV. Analysis**

On appeal, Respondent-Mother contends the trial court violated her due process rights by allowing "both her prior counsel to withdraw without notice to her, and her subsequent counsel to withdraw without prior notice to her at the beginning of the termination hearing." Consequently, Respondent-Mother requests this Court to vacate the Order terminating her parental rights in Jaxon and to remand the matter to the trial court with instructions to appoint counsel to her. Respondent-Mother's argument has merit.

It is well established that “when the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures, with the existence of such procedures being an inherent part of the State’s efforts to protect the best interests of the affected children by preventing unnecessary interference with the parent-child relationship.” *In re K.M.W.*, 376 N.C. 195, 208, 851 S.E.2d 849, 859 (2020) (citations and quotation marks omitted); *see also* N.C. Gen. Stat. § 7B-100(1) (2021). “Parents have a right to counsel in all proceedings dedicated to the termination of parental rights.” *In re L.C.*, 181 N.C. App. 278, 282, 638 S.E.2d 638, 641 (2007) (citations and quotation marks omitted); *see also* N.C. Gen. Stat. § 7B-1101.1 (2021) (providing that “[t]he parent [in a termination of parental rights proceeding] has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right”). After making an appearance in a particular case, an attorney may not cease representing a client without “(1) justifiable cause, (2) reasonable notice [to the client], and (3) the permission of the court.” *Smith v. Bryant*, 264 N.C. 208, 211, 141 S.E.2d 303, 305 (1965) (citation omitted).

“The determination of counsel’s motion to withdraw is within the discretion of the trial court, and thus we can reverse the trial court’s decision only for abuse of discretion.” *Benton v. Mintz*, 97 N.C. App. 583, 587, 389 S.E.2d 410, 412 (1990) (citation omitted). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re J.H.*, 373 N.C. 264, 268, 837 S.E.2d 847, 850 (2020) (citation omitted). “However, this

general rule presupposes that an attorney's withdrawal has been properly investigated and authorized by the court, so that, where an attorney has given his client no prior notice of an intent to withdraw, the trial judge has no discretion." *In re K.M.W.*, 376 N.C. at 209, 851 S.E.2d at 860 (citations and quotation marks omitted). Thus, "before allowing an attorney to withdraw . . . , the trial 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." *In re D.E.G.*, 228 N.C. App. 381, 386–87, 747 S.E.2d 280, 284 (2013) (citation omitted).

As an initial matter, DSS and the guardian ad litem contend that Mr. McManus was only provisionally appointed to represent Respondent-Mother, and because Respondent-Mother did not appear at the termination hearing, Mr. McManus was authorized to withdraw. *See* N.C. Gen. Stat. § 7B-1101.1(a) (2021) (stating that "[a]t the first hearing after service [of the termination petition] upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent: (1) [d]oes not appear at the hearing"). We disagree.

The record demonstrates that Mr. McManus was "provisionally appointed" as counsel for Respondent-Mother on 8 April 2022. However, by order entered 18 April 2022, the trial court allowed Ms. Porter's motion to withdraw as counsel for Respondent-Mother and appointed Mr. McManus as substitute counsel for Respondent-Mother. Thus, we reject DSS's and the guardian ad litem's arguments that Mr. McManus was only provisionally appointed to represent Respondent-

Mother. *See* N.C. Gen. Stat. § 7B-1101.1.

Although the record indicates that Ms. Porter's motion to withdraw from representation was predicated on her leaving the private practice of law, it appears that the trial court did not address Ms. Porter's pending departure from private practice and her motion as a motion to withdraw, but effectively treated the motion as one to substitute new counsel in the place of Ms. Porter. This is evidenced by the trial court appointing substitute counsel before removing Ms. Porter as counsel of record. No gap in representation was created, and Respondent-Mother was never without legal counsel of record. The decision to substitute counsel to represent Respondent-Mother in this matter to avoid creating a gap in representation would have been within the discretion of the trial court. *See State v. Kuplen*, 316 N.C. 387, 396, 343 S.E.2d 793, 798 (1986) ("In the absence of a constitutional violation, the decision about whether appointed counsel shall be replaced is a matter solely for the discretion of the trial court."). Nonetheless, there is no record evidence Respondent-Mother was served with the trial court's 18 April 2022 order, allowing Ms. Porter's motion to withdraw and substituting Mr. McManus as counsel.

Additionally, the transcript of the termination hearing suggests Mr. McManus moved to withdraw from representation based on his lack of contact with Respondent-Mother prior to the termination hearing. However, there is no record evidence Mr. McManus provided Respondent-Mother with notice of his intent to withdraw from representation prior to the 4 May 2022 termination hearing. *See Smith*, 264 N.C. at



211, 141 S.E.2d at 305. Moreover, the transcript of the termination hearing shows the trial court failed to make an inquiry into what efforts, if any, Mr. McManus made to contact Respondent-Mother and to inform her of his intention to withdraw from representation. *See In re D.E.G.*, 228 N.C. App. at 386–87, 747 S.E.2d at 284. As a result, we conclude the trial court erred by allowing Mr. McManus to withdraw from representation. *See In re K.M.W.*, 376 N.C. at 211, 851 S.E.2d at 861 (holding that the trial court erred in allowing counsel to withdraw and the respondent to proceed pro se where there was no evidence the respondent was served a copy of the withdrawal motion prior to the date upon which counsel was allowed to withdraw and where the trial court failed to make an inquiry into whether the respondent was served with the withdrawal motion, counsel had informed the respondent of his intention to withdraw, why the respondent had requested counsel to withdraw, and what efforts counsel had made to protect her statutory right to assistance of counsel); *see also In re D.E.G.*, 228 N.C. App. at 387, 747 S.E.2d at 284–85 (holding the trial court erred in allowing the respondent-father’s counsel to withdraw from representation where the record provided no indication counsel made any effort to notify the respondent-father of his intention to seek leave of court to withdraw from representation and “only minimal information bearing on the issue” of whether counsel had a “justifiable basis for his request for leave to withdraw”).

DSS and the guardian ad litem, urging this Court to uphold the termination Order, contend Respondent-Mother waived her right to counsel by failing to appear

for the termination hearing and to communicate with Mr. McManus. DSS and the guardian ad litem argue the instant case is analogous to *In re T.A.M.*, 378 N.C. 64, 859 S.E.2d 163 (2021). We are not persuaded.

In *In re T.A.M.*, the respondent-father had been advised numerous times of “his responsibility to attend all trial court hearings and maintain communication with his court appointed attorney[.]” *Id.* at 71, 859 S.E.2d at 168. He had also been advised that if he failed to attend hearings and maintain communication with his attorney, “his attorney ‘may ask and be permitted to withdraw as his attorney of record, and the case may proceed without him being represented by an attorney.’ ” *Id.* at 73, 859 S.E.2d at 169. Yet, the respondent-father made “no apparent effort to observe the trial court’s advisement to attend hearings[ and] admitted he did not want to receive mail from DSS or other interested parties[.]” *Id.* at 74, 859 S.E.2d at 170. When the respondent-father failed to appear at the hearing on the petition to termination his parental rights, the trial court engaged in a colloquy with the respondent-father’s counsel regarding the motion to withdraw filed more than a week prior to the hearing. *Id.* at 73, 859 S.E.2d at 169. Counsel for the respondent-father informed the trial court that she had spoken with the respondent-father that same day and that he did not object to his attorney’s withdrawal as counsel. *Id.* at 73, 859 S.E.2d at 169. Our Supreme Court concluded that the trial court did not abuse its discretion in granting the respondent-father’s counsel’s motion to withdraw. *Id.* at 74, 859 S.E.2d at 170.

The circumstances here are readily distinguishable from those in *In re T.A.M.* Respondent-Mother appeared at the hearing on the initial juvenile petition. Although the hearing on DSS's petition to terminate Respondent-Mother's parental rights was continued multiple times, Respondent-Mother was present at the 1 December 2021 and 9 March 2022 hearings. Most importantly, there is no record evidence that Respondent-Mother received notice of Mr. McManus being substituted as her counsel in place of Ms. Porter or that Mr. McManus provided Respondent-Mother with notice of his intent to withdraw from representation. *See In re T.A.M.*, 378 N.C. at 73, 859 S.E.2d at 169; *Smith*, 264 N.C. at 211, 141 S.E.2d at 305. Further, there is no evidence in the record indicating the trial court conducted any inquiry into: (1) whether Respondent-Mother had received notice of Mr. McManus's substitution for Ms. Porter, (2) whether Respondent-Mother had received notice of Mr. McManus's intent to withdraw, or (3) the extent of Ms. Porter's and Mr. McManus's efforts to contact Respondent-Mother. *See In re D.E.G.*, 228 N.C. App. at 386–87, 747 S.E.2d at 284. Therefore, we conclude the trial court erred in allowing Mr. McManus's withdrawal from representation. *See In re K.M.W.*, 376 N.C. at 211, 851 S.E.2d at 861. Accordingly, we vacate the trial court's 14 June 2022 Order terminating Respondent-Mother's parental rights in Jaxon.

## **V. Conclusion**

IN RE: J.S.

*Opinion of the Court*

The trial court's 14 June 2022 Order, terminating Respondent-Mother's parental rights in Jaxon is vacated, and this case is remanded for a new termination of parental rights hearing.

VACATED AND REMANDED.

Before a panel consisting of Judges COLLINS, CARPENTER, and WOOD.

Report per Rule 30(e).