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Abuse, Neglect, Dependency

Adjudicatory Hearing

Involuntary dismissal; Serious physical injury; No expert testimony

In re M.D., Jr., ___ N.C. App. ___ (July 1, 2026)

Held: Affirmed

- Facts: DSS and the guardian ad litem (GAL) appeal from the dismissal of an abuse and neglect petition involving a four-month-old infant. The petition was filed after the child suffered a choking incident while in the care of Mother and Father where the child was crying, grunting, vomited, and became limp. Father performed CPR although not trained in infant CPR. The child was taken to the emergency room where he was in cardiac arrest and not responsive upon arrival. The child was resuscitated by hospital staff, suffered subsequent seizure activity, and was later found to have sustained multiple injuries, including a subdural hematoma, a skull fracture, several healing stages of rib fractures, and a hematoma in one eye. At the adjudication hearing, DSS offered testimony from two social workers who had limited first-hand knowledge of the child's injuries as neither of which was the investigating social worker who filed the petition, Mother, and Father. Mother's and Father's testimony, which was part of DSS's case in chief since they were called by DSS, offered possible explanations for the injuries including Father's CPR, hospital resuscitation efforts, Father hitting the child's head on a door frame at some point, and/or the child's vacuum-assisted delivery. Hospital medical records consisting of 1,500 pages were admitted as evidence. No medical expert testimony was offered. There was a CME that was not admitted. At the close of DSS's evidence, parents' counsel motioned to dismiss the petition. The trial court granted the motion, finding DSS had failed to meet their burden of proving that the child was abused or neglected.
- A trial court's ruling on a motion to dismiss under Rule 41(b) is reviewed for an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is "manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." Sl. Op. at 11 (citation omitted).
- The rules of evidence in civil cases apply at an adjudicatory hearing. G.S. 7B-804. "At adjudication, the burden is on DSS to prove the allegations set forth in the petition by 'clear and convincing evidence' and the trial court . . . [is] tasked with *weighing* all competent evidence before it." Sl. Op. at 12, *quoting* G.S. 7B-805 (emphasis in original) (citation omitted). It is the role of the trial court to "pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn from them." Sl. Op. at 12 (citation omitted). "A dismissal under Rule 41(b) should be granted if the plaintiff has shown no right to relief or if the plaintiff has made out a colorable claim but the court nevertheless determines as the trier of fact that the defendant is entitled to judgment on the merits." Sl. Op. at 10 (citation omitted).
- An abused juvenile is one whose parent inflicts or allows the infliction of serious physical injury by nonaccidental means or creates or allows the creation of a substantial risk of serious physical injury by nonaccidental means. Abuse adjudications have been upheld "where clear and convincing evidence supported the inference that the respondent-parents inflicted the child's injuries or allowed them to be inflicted." Sl. Op. at 15 (emphasis in original) (citation omitted).
- A neglected juvenile is one whose parent does not provide proper care, supervision or discipline, or creates or allows an injurious living environment.
- The trial court did not abuse its discretion by granting parents' motion to dismiss. The trial court determined DSS failed to meet its burden of proof, explaining that DSS presented no evidence to

explain or infer that the child’s injuries were nonaccidental and inflicted or allowed to be inflicted by Mother and Father as alleged. The court found that the over 1,500 pages of hospital records, admitted as business records and authenticated by affidavit, were limited in their usefulness without a medical expert to testify as to their content or offer any opinion about what the records might reveal about the child’s injuries. Testimonies of Mother and Father offered *accidental* explanations for the child’s injuries. The trial court properly reviewed the medical records to the best of its ability (noting it was not a medical expert or provider) without a medical expert and ultimately gave greater weight to the parents’ testimonies.

Adjudication

Recusal; Neglect

In re A.J., ___ N.C. App. ___ (September 16, 2026)

Held: Affirmed

- Facts and procedural history: Mother appeals an order adjudicating her three children as neglected and two of the children as dependent following remand from the supreme court, [289 N.C. 409 \(2024\)](#), [summarized here](#). The initial adjudication was based on three reported incidents between Mother and one of the older children: one where Mother broke a car window to unlock the car when the child locked herself in and hitting the child with a belt; one where Mother choked the child and threw her out of the car; and one where Mother locked the child out of the house following an argument where the child sought safety at a neighbor’s and the police were called. Social worker testimony described concerns for Mother’s behavior surrounding the incidents and during attempted contacts to work out a case plan where Mother was angry, cursed at them, and was resentful of family who communicated with DSS. The court of appeals, and upon discretionary review, the supreme court, disregarded some of the trial court’s findings that were based on inadmissible hearsay consisting of statements made by the child to social workers, many relating to the second incident, and held the unsupported findings were insufficient to conclude the children neglected and the two older children dependent. The supreme court vacated and remanded the order to the trial court to enter a new order on the existing record or conduct further necessary proceedings in its discretion. On remand to the trial court, Mother moved for a new hearing based on the supreme court’s opinion and alleging the trial judge had previously recused himself and could not rule on the current matter. The trial court denied the motions and entered a new order with new findings and conclusions based on the prior adjudication hearing. On appeal from the new adjudication order, Mother argues that the trial judge recused himself from the case and therefore the new order must be vacated, and in the alternative, the findings are not supported by the evidence such that the adjudication of neglect is unsupported.
- Appellate courts review challenges to the validity of an order after an alleged recusal de novo. A trial judge is barred from entering any subsequent orders in a matter once a recusal order has been entered. An order, including a recusal order, must be written, signed, and filed to be effective. Here, there is no recusal order in the record. The record only reflects Mother’s motion at the hearing on remand alleging the trial judge recused himself following threats by Mother. Consequently, the judge did not recuse himself, and the new adjudication order is valid.
- Appellate courts review neglect and dependency adjudication orders “to determine whether the findings of fact are supported by clear and convincing evidence and whether the legal

conclusions are supported by the findings of fact.” Sl. Op. at 5 (citation omitted). The trial court determines the weight of the evidence and the reasonable inferences to be drawn from the evidence.

- Eleven challenged findings are the trial court’s inferences, including that Mother’s behavior during the reported incidents were due to anger, Mother appeared unstable, and that Mother exhibited extremely hostile and aggressive behavior. The findings are supported by evidence in the record of social workers’ interactions with Mother surrounding the incidents as well as their contacts with Mother when communicating about her case plan. Other challenged findings were supported by record evidence, including social worker’s and Mother’s testimony.
- “A neglected juvenile is one whose ‘parent . . . does not provide proper care, supervision, or discipline . . . or creates or allows to be created a living environment that is injurious to the juvenile’s welfare.’ ” Sl. Op. at 7, *quoting* G.S. 7B-101(15). Appellate courts have required finding “some physical, mental, or emotional impairment of the juvenile or substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline.” Sl. Op. at 7.
- The unchallenged findings together with the supported challenged findings are sufficient to support the trial court’s adjudication of the children as neglected juveniles. Findings include a physical altercation between Mother and one of the children resulting in photographed marks on the child, one instance of Mother exhibiting hostile and aggressive behavior after an argument with the child such that Mother was placed in handcuffs by the police, and that the younger child was present for at least two of the reported incidents. Mother has shown aggression to social workers and family members caring for the two older children, threatened one of the older children of placement in a group home rather than with relatives, and had not completed a mental health assessment at the time of the hearing. The trial court’s inferences demonstrate its ultimate finding that the juveniles are neglected and Mother created an injurious living environment through repeated actions that put the children in potentially harmful situations and failed to address or correct her behavior.

Review Hearing

Removal and timing of PPH; Cease reunification efforts not permitted

[In re J.Q.](#), ___ N.C. App. ___ (June 17, 2026)

Held: Affirmed in Part, Vacated in Part, and Remanded

- Facts: The child at issue was adjudicated neglected due to concerns for Mother’s substance use and domestic violence. At initial disposition, custody was ordered to Mother with secondary custody and placement with the child’s grandmother. At the first review hearing, the trial court ceased reunification efforts, made custody with a relative the permanent plan, and ordered custody to the grandmother with a permanency planning hearing to be held within 90 days. Mother appeals the order, arguing that the trial court failed to hold a permanency planning hearing within the statutory timeframe and lacked authority to cease reunification efforts at a review hearing.
 - Author’s Note: Although on the review hearing track, because physical custody was placed with grandmother thereby removing it from Mother such that she could not take

her child back without violating a court order, this case likely should have been placed on the permanency planning hearing track.

- The issue of a trial court's failure to follow a statutory mandate is automatically preserved for appeal. The standard of review is de novo.
- When custody has not been removed from a parent, guardian, or custodian at initial disposition, a review hearing is subsequently held. G.S. 7B-906.1(a). If the trial court determines at a review hearing that removal is in the best interests of the child, the trial court is required to schedule a permanency planning hearing within 30 days of review. G.S. 7B-906.1(d)(1a). In *In re T.H.*, 362 N.C. 446 (2008), the supreme court held that a writ of mandamus, rather than further delaying the matter through an appeal, is the proper remedy where a trial court fails to hold a hearing within a statutory timeframe. Here, the trial court failed to timely hold a permanency planning hearing as required by G.S. 7B-906.1(d)(1a). Mother did not petition for a writ of mandamus and Mother was not prejudiced by the error, as the error occurred subsequent to the hearing itself and a new hearing would not remedy the error.
- At a review hearing, G.S. 7B-906.1(d1) authorizes a trial court to maintain the juvenile's placement or order a different placement, appoint a guardian, or order any disposition authorized by G.S. 7B-903. The statutes governing review and permanency planning hearings only authorize the court to cease reunification efforts at a permanency planning hearing. G.S. 7B-906.2(b). Here, the trial court lacked authority to cease reunification efforts with Mother at the review hearing. That portion of the order is vacated and remanded for a permanency planning hearing to determine whether reunification efforts should be continued.

Termination of Parental Rights

Subject Matter Jurisdiction

Department petitioner; PPO as custody order

In re D.A.S., ___ N.C. App. ___ (July 1, 2026)

Held: Affirmed

- Facts: Mother appeals order terminating her parental rights for lack of subject matter jurisdiction. In the underlying proceedings, the three children at issue were adjudicated neglected and custody was ordered to DSS. A subsequent permanency planning order (PPO) continued custody with DSS. DSS filed petitions to terminate Mother's parental rights based on three grounds. Mother argues DSS lacked standing to file the TPR as the PPO attached to the TPR petitions did not comply with G.S. 7B-1104(5).
- Subject matter jurisdiction may be challenged for the first time on appeal and is reviewed de novo.
- The Juvenile Code grants a trial court exclusive, original jurisdiction to hear and determine TPR petitions relating to juveniles in the legal or physical custody of DSS at the time the petition is filed. G.S. 7B-1101. DSS has standing to invoke the trial court's jurisdiction if "custody of the juvenile has been given by a court of competent jurisdiction." G.S. 7B-1103(a)(3). The petition must state, "[t]he name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state" with a copy of the custody order attached to the petition. G.S. 7B-1104(5). When the record does not include a copy of the custody order

in effect at the time of filing, the trial court lacks subject matter jurisdiction unless DSS remediates the failure “by amendment of the petition or later production of the order.” Sl. Op. at 5 (citation omitted).

- DSS had standing to file the TPR petition and the trial court had subject matter jurisdiction to TPR. As shown in the PPO attached to the petition, the children remained in the legal custody of DSS, and that PPO was in effect at the time the TPR petitions were filed. The PPO constitutes a “custody order” for purposes of standing to file a TPR.

ICWA

Inquiry; Record of each participants’ response

In re G.A.D., ___ N.C. App. ___ (July 1, 2026)

Held: Remanded

- Facts: Mother appeals from an order terminating her parental rights arguing the trial court failed to comply with the mandatory inquiry requirements under the Indian Child Welfare Act (ICWA). The children at issue were placed in nonsecure custody after petitions were filed alleging the children were neglected and dependent juveniles. The first order continuing nonsecure custody found ICWA was not applicable based on Father’s identification of himself and the children as white and Father’s statement that neither he nor the children are members of or eligible for membership to a Native American tribe. Mother was not present at this hearing. Subsequent orders continuing nonsecure custody state that ICWA does not apply and required Mother and Father inform the court if they receive information that they or the children are tribal members or eligible for membership. Mother was present at one of six hearings on the need for continued nonsecure custody, the adjudication hearing, and one of four permanency planning hearings. The adjudication order and subsequent permanency planning orders made no findings regarding ICWA. DSS motioned to terminate the parents’ rights and both parents’ rights were ultimately terminated. The TPR order contained no findings regarding ICWA.
- The standard of review for compliance with ICWA is de novo.
- ICWA requires that when a state court knows or has reason to know that a child involved in an involuntary proceeding, including a TPR, is an Indian child, the party seeking foster care placement or to TPR must notify the parent or Indian custodian and the Indian child’s tribe of the pending proceedings. 25 U.S.C. 1912(a). Federal regulations, 25 CFR 23.107(c), address when a trial court has reason to know a child is an “Indian child,” which is defined as a child who is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. 1903(4). State courts “must ask each participant in an . . . involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record.” 25 C.F.R. 23.107(a). In *In re M.L.B.*, 377 N.C. 335 (2021), the supreme court held that the focus of the ICWA inquiry is the child or parents’ political affiliation with a tribe and not the child’s race. A TPR order will be remanded where an inquiry is not made of each participant and each participant’s response to the inquiry was not received on the record. *In re A.L.*, 378 N.C. 396 (2021).
- TPR remanded for court to make ICWA inquiry of Mother on the record as the record does not reflect whether the trial court made this inquiry of Mother. While the first order continuing nonsecure custody found Father identified himself and the children as white and that neither he

nor the children were tribal members or eligible for membership, the record does not reflect that the trial court made an inquiry of Mother as to whether Mother knows or has reason to know that either of the children are an Indian child. Relying on *In re M.L.B.*, without Mother's response on the record, a determination of whether there is reason to know the proceeding involves Indian children as required by 25 C.F.R. 23.107(c) cannot be made. On remand, if there is reason to know the child is an Indian child, the trial court must comply with the notice requirements of 25 C.F.R. 23.107(b) and hold a new TPR hearing. If there is not reason to know the child is an Indian child, the trial court must enter an order so stating and the TPR order remains undisturbed.

GAL for Respondent Parent

Appointment; Waiver of issue

In re E.I.-J.H., ___ N.C. App. ___ (August 19, 2026)

Held: Dismissed

- **Facts:** Mother appeals the termination of her parental rights (TPR) to two children, arguing the trial court abused its discretion by appointing her a Rule 17 guardian ad litem (GAL) without notice or conducting an inquiry and deprived her of her constitutional right to conduct her own litigation. There are two underlying A/N/D actions, one for each child that were brought one year apart (when the second child was born). Mother was appointed a Rule 17 GAL by the clerk in the separate underlying proceedings the day after the respective A/N/D petitions were filed. In each case, Mother's counsel and the GAL appeared at the initial nonsecure custody hearings, and Mother appeared at the hearing in one of those actions. The trial court determined in each case that Mother required a GAL and made the appointment based on her untreated mental health, history of GAL appointments in previous actions involving her other children, and testimony from the children's GAL Program Supervisor. Mother's children were adjudicated and various permanency planning hearings were held. Mother never objected to the GAL appointment. After DSS filed a TPR motion and where no objection to the GAL appointment was made, Mother's rights to both children were ultimately terminated.
- N.C. Rule of Appellate Procedure 10(a)(1) requires that to preserve an issue for appellate review, a party must have timely objected, stated specific grounds for the desired ruling if not apparent, and obtained a ruling on the objection. Appellate precedent holds that unpreserved constitutional arguments are waived on appellate review.
- Mother waived her constitutional argument. Nothing in the record indicates Mother objected to the appointment of her GAL in either action. In one of the underlying proceedings, Mother requested the court appoint a new Rule 17 GAL. Further, Mother testified and addressed the court at the TPR hearing and did not object to the appointment of her GAL during those proceedings. The court declined to invoke Appellate Rule 2 sua sponte without Mother showing manifest injustice or issues of public interest.

Adjudication

Neglect; Unlikelihood of future neglect

In re S.A., ___ N.C. App. ___ (September 16, 2026)

Held: Affirmed

- **Facts:** This appeal arises from the dismissal of a private TPR. Petitioners-appellants are the grandparents of the two children at issue. The children lived with petitioners during Mother's two-year period of incarceration following Mother entering an Alford plea to felony charges relating to the death of the children's sibling. During the investigation of the sibling's death, investigators found Mother had no history of criminal child abuse or criminal behavior prior to that child's death and there was no evidence of Mother or her boyfriend's neglect of the two children at issue. After Mother posted bond from the initial arrest and prior to her incarceration, Mother moved for visitation with the children, regularly engaged in therapy and completed mental health assessments, and began medication as part of her mental health treatment. During this period, Mother failed one THC screen out of several screens. At the TPR hearing in October 2025, the trial court found that Mother was making adequate progress in her case plan and was complying with court orders, visits with the children went well, and the children had bonded with her. The trial court concluded the likelihood of future neglect was not present and that grounds to TPR under G.S. 7B-1111(a)(1) did not exist. Petitioners appeal the dismissal of the TPR petition.
- Appellate courts review TPR orders to determine whether clear and convincing evidence supports its findings and whether the findings support its conclusion of law.
- G.S. 7B-1111(a)(1) allows a trial court to TPR if the court concludes that the parent has neglected the child as defined by G.S. 7B-101(15). The trial court "consider[s] any evidence of changed conditions in light of the evidence of prior neglect *and* the probability of [its] repetition." Sl. Op. at 4 (citation omitted) (emphasis in original). "The two most important factors in this assessment are 'the best interests of the child[ren] and the [parent's] fitness to care for [them] at the time of the termination proceeding.' " Sl. Op. at 5 (citation omitted).
- Findings of prior neglect, changed circumstances, and resulting unlikelihood of future neglect support the trial court's conclusion that grounds did not exist to TPR under G.S. 7B-1111(a)(1). The record clearly demonstrates clear and convincing evidence that Mother at one point neglected the deceased sibling but did not similarly neglect the other two children. The record also demonstrates a progressive change in Mother's circumstances, including Mother initiating visitation with the two children, therapist reports indicating the children are not experiencing any serious behavioral issues at home or school, Mother completing a mental health assessment and regularly taking medication as part of her mental health treatment, and an assessment by DSS of Mother's compliance with court orders and adequate progress under the plan for reunification prior to incarceration. Mother's "isolated positive [THC] test among far more negatives over that same period does not destroy the reunification plan here." Sl. Op. at 8. The circumstances surrounding the children at the time of the TPR hearing support a determination that future neglect is unlikely.

Appeal

Motion dismissed without prejudice; Interlocutory Appeal; G.S. 7B-1001(a)(2)

In re A.S., III, ___ N.C. App. ___ (June 17, 2026)

Held: Dismissed

- **Facts:** DSS and the child's GAL appeal from the trial court's dismissal without prejudice of DSS's motion to terminate Mother's and Father's parental rights to their child. In September of 2022, the child was adjudicated neglected and dependent. In April of 2024, DSS filed a TPR motion. In May of 2024, at a second preliminary hearing, the trial court ordered DSS to prepare a request for a special session due to the anticipated length of the TPR hearing. In July, August, and December of 2024, four orders continuing the preliminary hearings were entered stating the need for a special session, that the request for special session had been signed by the judge, and that a date for the special session had not been set. In January 2025, the trial court set the TPR hearing for February at the request of DSS, at which time a special session had still not been set. The TPR hearing was continued due to illness of mother's counsel. Two more preliminary hearings were held in April and June 2025, and one of those was continued due to Mother's counsel's absence. At the June hearing, parents' counsel motioned to dismiss DSS's TPR motion for failure to prosecute. The trial court dismissed without prejudice the TPR motion, finding that the delay in scheduling was extremely prejudicial to parents. Father argues the appeal is interlocutory.
- An interlocutory order is made when the action is pending and does not dispose of the case but allows for the trial court to take further action that settles and determines the entire controversy. Interlocutory orders may not generally be appealed unless the trial court certifies the matter for immediate appeal pursuant to Rule 54(b) or the appellant argues that the order affects a substantial right.
- "[I]n juvenile proceedings, '[t]he Rules of Civil Procedure apply only when they do not conflict with the Juvenile Code and only to the extent that the Rules advance the purposes of the legislature as expressed in the Juvenile Code.' " Sl. Op. at 6 (citation omitted). On motion to dismiss for failure to prosecute, Rule 41(b) authorizes a trial court to specifically order that a dismissal be without prejudice and therefore not an adjudication on the merits.
- G.S. 7B-1001(a)(2) provides immediate appeal of "[a]ny order, including the involuntary dismissal of a petition, *which in effect determines the action and prevents a judgment from which appeal might be taken.*" Sl. Op. at 7, *quoting* G.S. 7B-1001(a)(2) (emphasis in original).
- The appeal is dismissed for lack of appellate jurisdiction. The order dismissing the TPR motion is interlocutory. The trial court retains jurisdiction over the child under G.S. 7B-201(a), and because the TPR motion was dismissed without prejudice, DSS may refile its motion. DSS nor the GAL argued that the order affects a substantial right. A narrow reading of G.S. 7B-1001(a)(2) under these facts serves the purpose of the Juvenile Code and the best interests of the child in preventing further delay of the proceedings.
- **Concurrence:** The delay is contrary to the child's best interests and could have been easily prevented with proactivity by any number of parties in this matter. "[D]ismissing a juvenile

petition without prejudice should *never* be used as a tool to reset timeline targets established by statute.” Concurrence at 1 (emphasis in original).

Ineffective assistance of counsel; Insufficient record

In re M.A.F., ___ N.C. App. ___ (August 19, 2026)

Held: Remanded

- **Facts:** Mother appeals the termination of her parental rights to her three children on the sole issue of ineffective assistance of counsel. In the underlying neglect proceeding, Mother attended the continued nonsecure custody hearing and a hearing to approve DSS’s placement of the children during permanency planning. Mother did not attend any other hearings in the action. Mother was represented by the same counsel at the adjudication, disposition, and permanency planning hearings who reported he had not spoken to Mother and took no position. The second PPH order made extensive findings about Father’s control over Mother, including not allowing her to work, not allowing her to meet the social worker alone, searching her purse after supervised visits with the children, keeping her phone and deleting DSS contacts, and once stalking her hotel during a period of separation. The order also found Mother was bonded with the children, consistently visited the children, and maintained contact with DSS, though her cooperation with DSS was inconsistent. DSS moved to terminate Mother’s parental rights on three grounds. Mother did not appear at the TPR hearing. Mother’s same counsel appeared but remained silent. Counsel did not advise the court of any attempt to contact Mother, move to continue, make objections to evidence presented, cross-examine DSS witnesses, or present any evidence or argument on Mother’s behalf at either adjudication or disposition. No one addressed why Mother was absent. The TPR was granted. The TPR order included additional findings of Father’s control of Mother’s participation in the action, including preventing communication and cooperation with DSS, and Mother’s repeated intention to leave Father, one instance as recent as three days before the TPR hearing.
- “When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures . . .” Sl. Op. at 7 (citation omitted). Parents have the statutory right to counsel, unless waived, that includes the effective assistance of counsel. G.S. 7B-1101.1. An ineffective assistance of counsel claim requires that the respondent show both “that counsel’s performance was deficient and the deficiency was so serious as to deprive her of a fair hearing.” Sl. Op. at 7 (citation omitted). When the record and transcripts do not permit an appellate court to review whether counsel’s performance was deficient or whether any deficiency deprived the parent of a fair hearing, the appropriate remedy is remand.
- The TPR order is remanded. The record and transcript are silent as to why Mother did not appear at the hearings, what efforts counsel took to reach Mother after contact had lapsed during the underlying proceedings, and any explanation for counsel not participating once the TPR hearing had begun. While record evidence shows the adjudication may not have had a different outcome, it is possible counsel’s advocacy or Mother’s appearance could have changed the outcome at disposition. The record shows Mother consistently visited the children, stayed in contact with DSS through the weeks before the hearing, and that many difficulties in reaching Mother were due to Father’s threats, control, and interference. The court of appeals acknowledged that Mother may have waived her right to effective counsel by failing to communicate or appear and that counsel’s silence at the TPR hearing may have been strategic advocacy under the circumstances, but neither determination can be made on the present record and appellate courts will not speculate as to the underlying facts (relying on *In re S.N.W.*, 204 N.C. App. 556 (2010) and *In re C.D.H.*, 265 N.C. App. 609 (2019), and determining *In re C.D.H.* has not been explicitly overruled and is distinguishable from other supreme court

holdings briefed by DSS and the GAL). Ineffective assistance of counsel “will generally not be made where the purported shortcomings of counsel were caused by the party.” Sl. Op. at 9 (citation omitted). Similarly, ineffective assistance of counsel may not arise from a “failure to advocate;” for example, the attorney says nothing negative about their client and “ ‘resourceful preparation’ may have ‘reveal[ed] nothing position to be said for’ the mother.” Sl. Op. at 10 (citation omitted). The trial court must inquire and receive evidence about counsel’s conduct and Mother’s participation in the case to determine whether counsel’s performance was deficient and, if so, whether Mother was denied a fair hearing.