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## Abuse, Neglect, Dependency

### GAL for Respondent Parent

GAL participation; Minor parent; Fifth Amendment waiver

In re A.H.-G., \_\_\_ N.C. App. \_\_\_ (December 17, 2025)

**Held: Affirmed**

**Concur in part, dissent in part (Collins, J.)**

- Facts: Mother appeals adjudication and disposition orders concluding her infant abused and neglected based on nonaccidental injuries the child sustained and continuing custody with DSS. Mother is an unemancipated 16-year-old who is subject to a juvenile delinquency petition involving related felonies. Due to Mother’s age, Mother was appointed a Rule 17 GAL prior to the first hearing on the need for continued nonsecure custody. Mother’s GAL was present at the adjudication hearing. DSS called Mother to testify at the hearing and Mother’s counsel objected, based on mother’s minor status and GAL representation. Mother’s GAL was not asked whether Mother should waive her Fifth Amendment right against self-incrimination. The trial court overruled the objection and explained to Mother her rights, including that she could refuse to answer any question that would be incriminating in the delinquency case. Mother acknowledged the court’s explanation, did not ask any questions about her rights when given the opportunity, and subsequently testified for one hour, refusing to answer only one question based on her Fifth Amendment right. Mother argues the trial court committed reversible error by allowing Mother to decide whether to waive her Fifth Amendment right against self-incrimination while she was appointed a Rule 17 GAL.
- Appellate courts review a trial court’s compliance with a statutory mandate de novo.
- G.S. 7B-602(b) requires appointment of a Rule 17 GAL to represent a minor parent who is not married or emancipated, whereby the GAL “stand[s] in the place of” the minor parent who is “presumed by law not to have the requisite capacity to handle their own affairs[,]” such that “[t]he presence and active participation of a GAL appointed according to the provisions of Rule 17 effectively removes any legal disability of the party . . .” Sl. Op. at 8, 10 (citations omitted). “While a Rule 17 GAL appointed to a minor parent ‘divest[s] the parent of their fundamental right to conduct his or her litigation according to their own judgment and inclination’ . . . a Rule 17 GAL’s role is to act ‘as a guardian of procedural due process for the parent, to assist in explaining and executing her rights . . . to the fullest extent feasible and to do all things necessary to secure a judgment favorable to such party,’ which is dependent on the individual facts of the case[.]” Sl. Op. at 9 (citation omitted). Looking to guardianship under G.S. Chapter 35A as instructive for GALs who have a more limited scope and duration, the court of appeals states that to the extent possible a Rule 17 GAL should allow the minor parent to participate in all decisions which affect the minor parent.
- The trial court did not err by allowing Mother to determine whether to assert her Fifth Amendment right. The record shows Mother’s GAL was present at the hearing, did not speak when the court gave Mother a statement of her rights, and was not asked whether Mother should waive her Fifth Amendment right. However, Mother’s counsel objected, the trial court fully explained to Mother her right to remain silent, and Mother affirmatively acknowledged the explanation. During Mother’s testimony, Mother asserted the right when she refused to answer one question relating to one of the child’s injuries. Similar to *In re W.K.*, 376 N.C. 269 (2020), Mother has not shown on appeal what actions her Rule 17 GAL could have taken to secure a

decision more favorable beyond the actions of her attorney. Requiring the GAL to also object is “not a feasible step to act as guardian of Mother’s due process rights[.]” Sl. Op. at 14.

- The court of appeals noted that Mother’s GAL was appointed only by virtue of her age, that the record contained no indication that Mother lacked competency to understand the trial court’s explanation of her right to remain silent, and Mother exercised the right during her testimony. A Rule 17 GAL should preserve the opportunity for the incompetent person (here due to age of minority) to exercise rights that are within the understanding and judgment and allow “for the possibility of error to the same degree as is allowed to persons who are not incompetent.” Sl. Op. at 9 (quoting G.S. 35A-1201(a)(5)).
- Absent additional evidence such as an order defining the guidelines of the GAL’s appointment or record discussions between the GAL and Mother, the reviewing court “will not presume error from a silent record.” Sl. Op. at 16 (citation omitted).
- Dissent in part: The trial court erred by allowing Mother to waive her right to remain silent without the active participation of her appointed GAL. Appellate precedent requires active participation of a GAL in the proceedings such that the GAL rather than Mother must decide whether Mother will waive her constitutional rights. The record does not show that Mother’s Rule 17 GAL participated in any manner. The record does not indicate Mother’s GAL filed an answer or participated in the adjudication hearing, including not speaking when the trial court gave Mother a statement of her rights or when Mother was compelled to testify.

## Adjudicatory Hearing

Collateral estoppel; Conflict of interest

In re A.D.H., \_\_\_ N.C. \_\_\_ (December 12, 2025)

**Held: Reversed and Remanded (court of appeals)**

- Facts and procedural history: This action involves simultaneous proceedings of a civil custody dispute between Mother and Father and a juvenile action alleging the child at issue abused, neglected, and dependent. A report was made to Carteret County DSS based on statements the child made to classmates and her school counselor that Father sexually abused her. Carteret DSS referred the case to Craven County due to a conflict of interest given that Mother’s aunt was a former Carteret DSS employee and had continued relationships with social workers at DSS. Craven DSS found the allegations unsubstantiated after a trauma screening and Child Medical Evaluation (CME). A second report was made based on the same allegations and resulted in identical findings by Craven DSS. In the custody case, the trial court ultimately found that Father did not sexually abuse the child. The court entered a permanent child custody order (CCO) granting Father primary legal and physical custody because of concerns Mother was coaching the child. The order also included a provision that no one but the child’s current therapist could discuss past sexual abuse allegations with the child. Craven DSS filed an interference petition after a third report was made by the child’s school counselor to Carteret DSS, Carteret DSS interviewed the child and recommended another CME, and Father refused to subject the child to another CME, citing to the provisions of the CCO. The trial court dismissed the interference petition (IPO) with prejudice after finding that (1) counsel for DSS stated the investigation could be completed without the CME and (2) reiterating facts in the CCO. A fourth report was made where Carteret DSS again attempted to conduct an investigation and Father refused. The trial court then entered a temporary emergency custody order awarding Father emergency temporary custody of the child and restraining Mother from removing the child from Father’s custody. Carteret DSS subsequently questioned the child at school and ultimately filed a juvenile

petition based on statements the child made both before and after entry of the CCO and IPO. Before filing the petition, Carteret DSS attempted to refer the matter to Craven DSS due to the apparent conflict of interest but Craven DSS refused due to lack of substantiated evidence. The trial court ultimately dismissed the juvenile petition with prejudice based on the doctrine of collateral estoppel. DSS appealed. The court of appeals vacated and remanded the case after reviewing the differing evidentiary standards of the CCO, IPO and juvenile petitions, holding that the doctrine of collateral estoppel applied but that the more recent allegations made after entry of the CCO and IPO could not be estopped. Carteret DSS filed a petition for discretionary review of whether the doctrine of collateral estoppel applies to the CCO and IPO.

- “Whether a court is barred from hearing a specific issue under the doctrine of collateral estoppel is a question of law.” Sl. Op. at 8. Questions of law are reviewed de novo.
- The doctrine of collateral estoppel “precludes relitigation of a fact, question, or right in issue.” Sl. Op. at 9 (citation omitted). Appellate precedent has established the requirements for defensive-use collateral estoppel to include:“(1) a valid final judgment on the merits in a previous suit; (2) the later suit involves identical issues; (3) the issue was actually litigated in the prior suit and necessary to the judgment; (4) the issue was actually determined; and (5) the party to be collaterally estopped was a party or in privity with a party to the prior suit, who had a full and fair opportunity to litigate the issue in the earlier action.” Sl. Op. at 12-13. Privity is a due process protection that has been generally defined by the NC Supreme Court as “a person so identified in interest with another that he represents the same legal right.” Sl. Op. at 10 (citation omitted).
- The court of appeals erred in holding that Carteret DSS was a party or in privity with a party to the CCO and collaterally estopped from adjudicating the allegations in the juvenile petition based on the CCO. Mother and Father were the only parties to the child custody action. Neither county DSS intervened in the custody action. Although a DSS social worker was a witness and testified, that participation did not make DSS a party to the custody action. Further, Mother and Father’s interests and legal rights are distinct from and do not represent the interests of DSS which are statutorily prescribed to include investigating claims of sexual abuse, assessing the child’s circumstances, and removing the child from the home or providing protective services to the child.
- The court of appeals erred in concluding factual issues alleged in the juvenile petition were actually litigated and determined in the IPO such that Carteret DSS was collaterally estopped from adjudicating the allegations in the petition. Findings in the IPO were recitations of arguments made by Father’s counsel regarding whether abuse had occurred. The trial court failed to make “actually determined” findings of fact on the issue that would preclude the court from adjudicating the juvenile petition. Sl. Op. at 15
- The court observed the substantial conflict of interest Carteret DSS possesses in the case, deeming its continued participation in the matter “wholly inappropriate.” Sl. Op. at 6 n.2, 16. Findings include that Mother’s aunt previously worked at Carteret DSS with the social worker assigned to the case; Mother’s aunt was friends with the social worker on social media; and the social worker and other Carteret DSS employees were tagged in social media fundraising posts made by Mother’s aunt aimed at raising funds to pay for Mother’s legal fees related to the child custody action.

## Adjudication

Abuse; Nonaccidental injuries; Inference

In re A.H.-G., \_\_\_ N.C. App. \_\_\_ (December 17, 2025)

**Held: Affirmed**

**Concur in part, dissent in part (Collins, J.)**

- **Facts:** Father appeals adjudication and disposition orders concluding his infant is an abused juvenile and continuing custody with DSS. A report was first made to DSS when the three-month-old child was brought to a hospital and diagnosed with nonaccidental trauma including several rib fractures, a tibia fracture, and bruises on her chest and back which appeared to be three weeks old. Upon investigation, DSS learned of a history of domestic violence between Mother and Father. Mother, Father and the infant lived in the home of the maternal grandparents where weeks prior, maternal grandfather called the police after Father allegedly assaulted Mother while Father was holding the child. Prior to the medical examination Mother and Father denied the child had any injuries, and after the child's diagnoses and findings were made, Mother and Father provided no further explanation as to the cause of the injuries other than offering the possibility of injury while the child was being passed around to guests at a recent party. Mother and Father signed a temporary safety placement (TSP) with the paternal grandmother where the parents were to have no unsupervised contact with the child. A follow-up exam ten days later found new injuries to the child including an unexplained subconjunctival hemorrhage in her eye and a new, unexplained fracture to another rib. Mother and Father entered into a second TSP with the paternal aunt where the parents were again to have no unsupervised contact with the child. Twenty days later a follow-up medical exam of the infant found new unexplained or poorly explained bruising to the child's shoulder, thigh, and back. Mother and Father admitted to several visits with the child. The paternal aunt stated that the injuries occurred when the child slipped from her hands during a sink bath and that it was possible her one-year-old bit the infant. The paternal aunt also stated Mother's visits were so frequent and long that there were brief periods when she could not supervise the visits. At this time, the maternal grandmother reported an incident that occurred prior to the child's second medical exam where Mother and Father took the child to a bedroom alone in her home for thirty minutes, she heard a physical struggle, Father left to get the child medication, returned to the bedroom and locked the door. DSS ultimately filed the petition, obtained nonsecure custody, and the child was adjudicated abused and neglected. Father challenges the abuse adjudication and argues the trial court's findings of fact do not support the inference that the respondent parents inflicted or allowed to be inflicted the child's injuries.
- Appellate courts review an adjudication of abuse "to determine whether the findings of fact are supported by 'clear and convincing evidence[,]'" and whether the trial court's conclusions "are properly supported by those findings of fact." Sl. Op. at 16 (citation omitted). Unchallenged findings are binding on appeal. Conclusions of law are reviewed de novo. Father did not challenge any findings of fact on appeal and therefore they are binding.
- An abused juvenile is one whose parent " '(a) inflicts or allows to be inflicted upon the juvenile serious physical injury by other than accidental means' or '(b) creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.'" Sl. Op. at 17, *citing* G.S. 7B-101(1). Appellate courts have upheld abuse adjudications where a child suffered unexplained, non-accidental injuries and "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 17 (citation omitted). An adjudication of a child as abused does not concern

the fault of the parent, only the status of the child. Trial courts have discretion in determining a child's risk of harm based on the child's age and living environment, and may look to the historical facts of the case when assessing the risk of future abuse in the case of young infants.

- The trial court's findings support the conclusion that the child is an abused juvenile. The unchallenged findings show the infant suffered unexplained, non-accidental injuries on three occasions for which the child could not have self-inflicted and for which the court found Mother and Father's explanations not credible (e.g. the child was injured by guests while being handled at a party, was dropped in a sink, or scratched herself). Despite the absence of evidence that Mother and Father were the child's exclusive caretakers when the injuries occurred, the trial court's extensive findings support the inference Mother and Father inflicted the injuries or allowed them to be inflicted and that Mother and Father created or allowed to be created a substantial risk of serious physical injury to the child.

Neglect; Abuse of sibling in the home; Risk of future neglect

In re E.H., \_\_\_ N.C. \_\_\_ (August 22, 2025)

**Held: Reversed in part**

- Facts and procedural history: This case arises on discretionary review and writ of certiorari from a divided decision of the court of appeals, [294 N.C. App. 139](#) (2024) vacating in part and remanding the trial court's adjudication of one of two children. The PDR was granted to reaffirm supreme court precedent. The court of appeals affirmed the adjudication of the younger child as abused and neglected based on the three-week-old suffering several nonaccidental acute bone fractures while in the exclusive care of Mother and Father for which the parents denied any trauma or incident had occurred to cause the serious injuries and offered no explanation beyond that they heard a "pop" during a diaper change. Without a plausible explanation or accepting responsibility for the infant's serious injuries, the trial court rendered the parents' home "an injurious environment for any juvenile" and adjudicated the infant's 4-year-old older brother as neglected. Sl. Op. at 5. The court of appeals vacated the sibling's neglect adjudication, holding the trial court relied solely on the abuse or neglect of the younger sibling and failed to make sufficient findings regarding either abuse of the older child or the probability of future neglect of the older child.
- Adjudication orders are reviewed to determine whether the adjudication is supported by adequate findings of fact which in turn are supported by clear and convincing evidence in the record.
- 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." G.S. 7B101(15)(a), (e). "[I]n determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile . . . lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." Sl. Op. at 7, *quoting* G.S. 7B-101(15) (emphasis in original). Appellate precedent holds that while a neglect adjudication cannot be based solely upon the abuse or neglect of another child in the home, other factors surrounding the abuse itself can indicate other children in the home could face similar harm and support a conclusion of neglect. "[W]hen another child in the same home has suffered some abuse or injury, the trial court should assess how and why the harm occurred, whether other children in the home could be subject to that same harm, and whether the parents display a willingness to 'remedy the injurious environment' that caused the harm so that it cannot occur again." Sl. Op. at 8, *quoting In re A.J.L.H.*, 384 N.C. 45, 56 (2023) and *In re*

*A.W.*, 377 N.C. 238, 249 (2021). “Facts that can demonstrate a parent’s unwillingness to remedy the injurious environment include offering an ‘implausible explanation’ for the abuse of another child, ‘failing to acknowledge’ another child’s abuse, or ‘insisting that the parent did nothing wrong when the facts show the parent is responsible for the abuse.’” Sl. Op. at 8-9, *quoting In re A.J.L.H.*, 384 N.C. at 56 *and citing In re A.W.*, 377 N.C. at 248-49. The trial court is not required “to find a specific pattern of past abuse or specific facts that predict when and how future abuse might occur.” Sl. Op. at 10.

- The trial court’s adjudication of the older child as neglected was supported by adequate findings of fact which were supported by clear, cogent, and convincing evidence. Findings included that the older brother was four years old and a “similar ‘tender’ age to his younger sibling”, that Mother and Father did not provide “any plausible explanation” for the infant’s injuries, that Mother and Father were “responsible” for the infant’s injuries, and that Mother and Father “continue to maintain that they were not responsible for these injuries, and as such, renders their home an injurious environment for any juvenile as there are no reasonable means to protect the juvenile from a similar injury occurring in the home.” Sl. Op. at 10. These findings are sufficient to support the conclusion of neglect under supreme court precedent reaffirmed in recent decisions: *In re J.A.M.*, 372 N.C. 1 (2019), *In re D.W.P.*, 373 N.C. 327 (2020), *In re A.W.*, 377 N.C. 238 (2021), and *In re A.J.L.H.*, 384 N.C. 45 (2023). While a trial court is not required to make a finding that there is an “unacceptable risk of similar abuse to other children in that same home in the future” based on these facts (noting a trial court could find that other children in the same home are not at risk of similar harm because of a large age difference), the trial court here properly found there was an unacceptable risk of similar abuse to the other child in the home based on the findings that the infant’s injuries were “non-confessed” and “unexplained”. Sl. Op. at 11, n.1.

## Visitation

### No contact

*In re M.B.*, \_\_\_ N.C. App. \_\_\_ (February 18, 2026)

#### **Held: Affirmed**

- Facts: The child at issue was adjudicated neglected and dependent due to concerns for Mother’s mental health, parenting skills, and substance use. The child was removed from Mother and visitation was ordered. During permanency planning and based on Mother’s threatening, abusive, and erratic behavior, Mother was ordered to not have contact with the child. Mother appeals the permanency planning order, arguing the trial court abused its discretion in ordering no visitation.
- Dispositional orders, including visitation, are reviewed for abuse of discretion and will only be overturned “upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” Sl. Op. at 8. Unchallenged findings are binding on appeal. Mother does not challenge any findings of fact in the PPO.
- The trial court did not abuse its discretion when ordering Mother not to have contact with the child. The unchallenged findings show Mother’s behavior during visitation made the child uncomfortable and caused the social worker to end at least one visit 30 minutes early. This behavior included Mother being visibly agitated during visits, screaming at the child that Mother and the child’s life were in danger, recording visitation, and on one occasion, appearing confused how to exit the building. The findings also detail Mother’s history of verbal abuse, profanity, and threats of violence directed at social workers through text messages and social

media, which at times were in the presence of the child and were found to have negative effects on the child. Findings also show Mother texted social workers where she appears to have been suicidal or at least threatened to commit suicide. The trial court also found Mother's behavior at the permanency planning hearing to be erratic and that Mother stormed out of the courtroom twice. Based on the findings, the trial court determined Mother's mental health and substance use concerns had not been resolved and contact between the child and Mother were not in the child's best interests. The court of appeals distinguished these facts from *In re J.C.-B*, 276 N.C. App. 180 (2021), where the no-contact disposition was vacated because the trial court left the disposition to the discretion of the child's therapist. Here, the trial court exercised its own discretion in making the dispositional decision.

### Permanency Planning Hearing

Continuance; Absent parent; Judicial knowledge of prior proceedings

In re L.M., \_\_\_ N.C. App. \_\_\_ (November 19, 2025)

**Held: Affirmed**

- Facts: Mother appeals a permanency planning order (PPO) eliminating reunification as a permanent plan for six of her seven children when the court denied her motion to continue based on her absence. The six older children were adjudicated abused, neglected, and/or dependent at various times. Mother was present at each adjudication hearing and subsequent dispositional hearings for the six older children except for one permanency planning hearing. DSS obtained nonsecure custody of Mother's seventh, youngest child and Mother did not appear at the nonsecure custody hearings. Mother also missed subsequent hearings for all seven children. The trial court scheduled for the same day the adjudication and disposition hearings for the youngest child, the permanency planning hearings for the six older children, and a contempt hearing for Mother. Mother received fifteen days' notice of the hearing and its purpose. Mother did not appear but communicated with her counsel that morning that she did not have a ride. Mother's counsel motioned to continue based on Mother's absence. The trial court denied the motion, citing to Mother regularly not appearing in the proceedings and her noncompliance with orders. The hearing proceeded, and Mother's counsel had the opportunity to participate in the hearing. Mother argues the trial court abused its discretion in denying her motion to continue and relying on unsupported assumptions regarding her attendance during the life of her children's cases.
- Denial of a motion to continue that does not assert a constitutional basis is reviewed for abuse of discretion. Denial may be grounds for a new trial only if the respondent can show the trial court erred and that error was prejudicial. The trial court must consider all facts in evidence and may not "act on its own mental impression or facts outside of the record" in making its conclusions; however, the trial court may "take into consideration facts within its judicial knowledge." Sl. Op. at 9 (citation omitted). Appellate precedent holds that a parent's absence at a dispositional hearing is not per se prejudicial.
- G.S. 7B-803 governs continuances in abuse, neglect, and dependency proceedings. Continuances may be granted "only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile." G.S. 7B-803. Extraordinary circumstances involve "[a] highly unusual set of facts that are not commonly associated with a

particular thing or event.” Sl. Op. at 7 (citation omitted). Continuances are disfavored and the burden of showing sufficient grounds is on the party seeking the continuance.

- The trial court did not abuse its discretion in denying Mother’s motion to continue. The trial court’s denial based on Mother’s regular absence in the proceedings was premised on judicial knowledge rather than mental impression. The trial court had presided over six hearings regarding Mother’s seven children for which she had not appeared, had previously granted continuances in the case when Mother was in the hospital or incarcerated, and regularly received court reports from DSS and the children’s GAL that included the children’s status and case history. Mother offered no further reasoning other than her absence to support the motion to continue for extraordinary circumstances. Citing *In re L.G.*, 274 N.C. App. 292 (2020) and the purpose of permanency planning hearings stated in G.S. 7B-906.1(g) and (i), the court of appeals noted that denial of the motion advanced justice for the children in identifying permanency plans for the children whose cases had been active from between three and six years at the time of the hearing. Further, assuming error, Mother did not demonstrate she was prejudiced. Her absence alone does not amount to prejudice and she waived her constitutional arguments by failing to preserve the issues.

#### Gag order prohibiting social media posts about case

In re M.B., \_\_\_ N.C. App. \_\_\_ (February 18, 2026)

**Held: Affirmed**

- Facts: Mother’s child was adjudicated neglected and dependent due to concerns for Mother’s mental health, parenting skills, and substance use. During permanency planning, Mother was ordered not to discuss the case or people involved with the case on social media. Mother appeals the permanency planning order, challenging the provision as exceeding the trial court’s dispositional authority and a violation of her constitutional rights.
- Dispositional orders, including all dispositional choices, are reviewed for an abuse of discretion and will only be overturned “upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” Sl. Op. at 8.
- G.S. 7B-904(d1)(3) grants the trial court dispositional authority to order a parent to “[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile’s adjudication or to the court’s decision to remove custody of the juvenile to the parent.” Though broad, the court of appeals has noted this authority is not unlimited, stating “there must be a nexus between the step ordered by the court and a condition that is found or alleged to have led to or contributed to the adjudication.” Sl. Op. at 12 (citation omitted).
- The trial court did not abuse its discretion in ordering Mother not to discuss the case or individuals involved in the matter on social media. A nexus exists between Mother’s behaviors during the case and the trial court’s limitation. The child was adjudicated and removed from Mother’s care based on Mother’s need to address her mental health, parenting skills, and substance use. The unchallenged findings in the PPO include the same types of behavior that contributed to the child’s adjudication, including Mother’s pattern of abusive and threatening social media posts. Findings showed Mother’s posts threatened suicide, claimed child abuse by DSS employees, and threatened specific social workers and other involved in the case. Based on these findings, the trial court concluded Mother’s social media activity could discourage DSS employees and others from working with the child and directly harm the child if the child were to see the publicly available posts. The trial court concluded Mother’s continued discussion of the case and those involved on social media was not in the child’s best interests. The gag order

was limited to Mother’s discussion on social media of matters and individuals involved with the case and was not a prohibition on Mother’s use of social media generally or from her speaking to others about the case.

- Mother failed to make a constitutional argument to the trial court and therefore failed to preserve her constitutional argument for appeal.

## Appeal

### Preservation; Constitutional rights and continuance

In re L.M., \_\_\_ N.C. App. \_\_\_ (November 19, 2025)

#### **Held: Affirmed**

- Facts: Mother appeals a permanency planning order arguing the trial court abused its discretion in denying her motion to continue. At the hearing, Mother’s counsel motioned to continue based on Mother’s absence with no further reason offered. The trial court denied the motion and the hearing proceeded. The court ultimately entered an order eliminating reunification as a permanent plan for six of Mother’s children. Part of Mother’s argument on appeal is that her due process rights and right to effective assistance of counsel were violated when the court conducted the hearing in her absence.
- N.C. Rule of Appellate Procedure 10(a)(1) requires that to preserve an issue for appellate review, a party must have timely requested, objected, or motioned the trial court and stated specific grounds for the desired ruling if the grounds are not apparent from the context. Appellate precedent holds that a parent waives the argument that denial of their motion to continue violated their constitutional rights when nothing in the record indicates the motion was based on the need to protect the parent’s constitutional rights. A parent’s absence alone does not amount to a due process violation or make apparent the motion is based on constitutional grounds.
- Mother waived her constitutional arguments. Mother’s absence was the only reason offered by Mother’s counsel for the motion to continue. No further context was provided and nothing in the record indicates the motion was made to protect Mother’s constitutional rights to due process or effective counsel.

### Limits on role of appellate court; Preservation of issues required

In re E.H., \_\_\_ N.C. \_\_\_ (August 22, 2025)

#### **Held: Reversed in part**

- Facts and procedural history: This case arises on discretionary review and on writ of certiorari from the divided decision of the court of appeals, 294 N.C. App. 139 (2024), regarding the adjudication of one of two children. The court of appeals affirmed the trial court’s adjudication of the younger child as abused and neglected based on the infant suffering serious, nonaccidental injuries while in the exclusive care of his parents for which the parents offered no plausible explanation. Based on these facts, the trial court rendered the parents’ home “an injurious environment for any juvenile” and adjudicated the infant’s 4-year-old brother neglected. Sl. Op. at 5. The court of appeals vacated the trial court’s adjudication of the older brother, holding the court failed to make sufficient findings regarding either abuse of the older child or the probability of future neglect of the older child and instructed the trial court on

remand to make additional findings “in the absence of a compelled confession by either parent or violation of the marital privilege”. 294 N.C. App. at 152. The supreme court reversed the portion of the court of appeals decision vacating the older child’s neglect adjudication, summarized separately. This summary addresses the supreme court’s discussion of appellate review.

- Rule 10 of Appellate Procedure provides that evidentiary privileges and constitutional claims not raised at the trial level are not preserved and waived for appellate review. It is “well-settled rule in juvenile cases that appellate courts ‘may not address an issue not raised or argued by the respondent’ for it is not the role of the appellate courts to create an appeal for an appellant.’ ” Sl. Op. at 13 (citation omitted), *citing* N.C. R. APP. P. 28(b)(6). Here, the court of appeals raised unpreserved issues and is cautioned against continuing this practice.
- The supreme court rejected the court of appeals analysis of the issues of marital privilege and the constitutional rights of parents which were not raised or preserved by the parties at the trial court or argued on appeal. In vacating the adjudication of the older child as neglected, the court of appeals “asserted that the trial court’s order constituted an ‘ultimatum’ to ‘confess or lose your children’ that violated ‘marital privilege’ and the constitutional ‘presumption of fitness.’ ” Sl. Op. at 12. The supreme court warned that “[a]ddressing issues that the parties never raised, preserved, and asserted on appeal is harmful for several reasons.” Sl. Op. at 13. One of those reasons is risking “that the court is missing something and, as a result, is about to mess up the law.” Sl. Op. at 13. In demonstrating this risk of legal theories not having “been tested in the crucible of adversarial briefing”, the supreme court stated “the marital privilege does not apply in these juvenile proceedings.” Sl. Op. at 13 (citing G.S. 7B-310, 8-57.1).

## Termination of Parental Rights

### GAL for Respondent Parent

Appointment; Notice to parent; Preserving the issue

In re A.T., \_\_\_ N.C. App. \_\_\_ (November 5, 2025)

#### **Held: Affirmed in Part; Vacated and Remanded in Part**

- **Facts:** Respondent Father appeals the order terminating his parental rights on the ground of neglect. The children were removed from Father and Mother and adjudicated neglected based on concerns for the parents’ mental health, substance use, employment and housing. Both parents were ordered to undergo comprehensive psychological evaluations as part of their case plan. Father’s evaluation indicated diagnoses of cannabis use disorder and either bipolar disorder or schizoaffective disorder, but also indicated Father was not subject to cognitive limitations or learning disabilities. During permanency planning a continuance order was entered *sua sponte* finding there was cause to appoint a Rule 17 Guardian ad Litem (GAL) for both parents. Both parents and their appointed GALs appeared at a subsequent permanency planning hearing where the court identified parents’ mental health, housing, substance use, and employment remained barriers to reunification. DSS filed TPR motions for both parents and their rights were ultimately terminated. Father argues the trial court abused its discretion in appointing a Rule 17 GAL without notice or conducting an inquiry to determine his incompetency. Mother did not appeal her Rule 17 GAL appointment.
- The court of appeals recognized Father did not preserve the constitutional issue for appeal and neither Father nor the children’s GAL addressed preservation in their appellate briefs. The court of appeals invoked Rule 2 of the Rules of Appellate Procedure to review Respondent-Father’s argument, noting this as an exceptional circumstance given the nature of the appointment of

Father's GAL – *sua sponte* in a continuance order – which made it impossible for Father to contemporaneously object.

- Trial court decisions to appoint a GAL for a parent and inquiries concerning a parent's competence are reviewed on appeal for abuse of discretion.
- G.S. 7B-1101.1(c) allows the trial court to appoint a Rule 17 GAL for an incompetent parent on motion of any party or the court's own motion. Courts look to the definition of incompetent adult in G.S. 35A-1101(7). "[E]vidence of mental health problems is not *per se* evidence of incompetence to participate in legal proceedings." Sl. Op. at 9 n.8 (citation omitted). Appointment of a GAL "divest[s] the parent of their fundamental right to conduct his or her litigation according to their own judgment and inclination." Sl. Op. at 7 (citation omitted). Appellate precedent requires a parent to have knowledge or notice that a motion seeking appointment of a GAL for the parent is being made before the appointment may be made.
- The trial court abused its discretion by appointing a GAL for Father without providing Father notice and an opportunity to be heard on the issue. Additionally, the trial court's decision appeared to be based solely on Father's psychological evaluation without any further evidence or inquiry of Father's competence to participate in the proceedings. The TPR order as to Respondent-Father is vacated and remanded for a new hearing.
- The court of appeals rejected the argument of the children's GAL that Respondent-Father has diminished capacity and therefore the GAL was acting in an assistive rather than substitutive role. Those distinctions were removed by the General Assembly in 2013 and the statute now only authorizes the appointment of a GAL, which acts in a substitutive capacity, for an incompetent adult. Sl. Op. at 8 n.7.

## Adjudication

Neglect; Likelihood of future neglect

In re A.T., \_\_\_ N.C. App. \_\_\_ (November 5, 2025)

**Held: Affirmed in Part; Vacated and Remanded in Part**

- Facts: Respondent Mother appeals an order terminating her parental rights as to two children based on the ground of neglect. The children had been adjudicated neglected based on concerns for the parents' mental health, substance use, employment and housing. Both parents were ordered to undergo comprehensive psychological evaluations as part of their case plan. Mother's evaluation indicated significant psychological problems and multiple diagnoses for which she refused recommended treatment. Subsequent permanency planning findings consistently found Mother's lack of stable employment and mental health issues remained barriers to reunification, though Mother had found stable housing. The court ultimately terminated both parents' rights. Mother appeals, challenging several findings and the court's determination that the evidence established a likelihood of future neglect.
- Appellate courts review the adjudication of grounds to TPR to determine whether the findings of fact are supported by clear, cogent, and convincing evidence and whether the findings support the conclusion of law. Conclusions of law are reviewed de novo. Findings supported by competent evidence are binding on appeal even if contrary evidence exists.
- 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). A neglected juvenile is one whose parent "[d]oes not provide proper care, supervision, or discipline" or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." G.S. 7B-101(15)(a), (e). In instances where the child and parent have been separated for a long period of time, "there

must be a showing of past neglect and a likelihood of future neglect by the parent.” Sl. Op. at 10 (citation omitted). When determining whether future neglect is likely, the trial court “must consider evidence of changed circumstances between the period of past neglect and the time of the termination hearing.” Sl. Op. at 11 (citation omitted). Failure to make progress on the parent’s case plan can be indicative of a likelihood of future neglect.

- Challenged findings are supported by the evidence and relevant. Though some challenged findings recite evidence (e.g., reports), some are based at least in part on testimony from the hearing. The order contains ample specific, ultimate findings to support the trial court’s conclusion that TPR grounds existed and that the trial court made an independent determination on the evidence presented. Part of the finding indicating the family had been evicted for weeks, rather than days, prior to the report to DSS is unsupported and disregarded.
- The trial court’s conclusion that Mother’s parental rights were subject to termination was supported by the findings and the findings demonstrated both past neglect and a likelihood of future neglect. Findings included that although Mother had found stable housing and had recently begun to comply with clinical recommendations with regards to her mental health, Mother inconsistently adhered to her case plan over the eighteen months between when the children were removed and the TPR hearing, had not secured stable employment, had not addressed her substance use and repeatedly tested positive for marijuana.