

### **“Reasonable Efforts” and the Non-removal Parent**

In re D.M., \_\_\_ N.C. App. \_\_\_, 712 S.E.2d 355 (April 19, 2011)

The court of appeals reversed a permanency planning order that placed permanent custody with a grandmother, holding that the trial court erred in doing so without finding that the child’s father had acted inconsistently with his constitutionally protected parental rights. The court’s opinion remanding the case included the following dicta:

Furthermore, although we are reversing the 20 July 2010 order due to the trial court's failure to consider whether respondent-father had acted inconsistently with his constitutionally protected status as a parent, we will address some other issues which will likely recur on remand, in the hope of avoiding future appeals in this case. First, in the 20 July 2010 order, the trial court made findings of fact regarding the “reasonable efforts” of DSS to reunite Dana with her parents. N.C. Gen.Stat. § 7B-101(18) defines “reasonable efforts” as

[t]he diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

N.C. Gen.Stat. § 7B-101(18) (2009). The North Carolina statutes do not include a definitive listing of the services which may be provided as a part of “reasonable efforts,” but there is a

federal regulation setting forth a nonexclusive list of services which *may* satisfy the “reasonable efforts” requirement. 45 C.F.R. § 1357.15(e)(2) (1996) (*i.e.*, crisis counseling, individual and family counseling, services to unmarried parents, mental health counseling, drug and alcohol abuse counseling, homemaker services, day care, emergency shelters, vocational counseling, emergency caretaker, and “other services which the agency identifies as necessary and appropriate”).

*In re Helms*, 127 N.C.App. 505, 512 n. 3, 491 S.E.2d 672, 677 n. 3 (1997) (emphasis in original).

In the 20 July 2010 order, the trial court made the following findings as to “reasonable efforts”:

Prior to this hearing, reasonable efforts to achieve the permanent plan of reunification for the juvenile were made by OCDSS including, but not limited to, the following:

- a. Case management services to ... [mother] and the children in the home.
- b. Referral to substance abuse treatment and mental health services through Horizons.
- c. Referral to the Center for Child and Family Health for mental health services for [Dana].
- d. Referral to Kidscope for a behavioral evaluation for [Bob].
- e. Referral to the CDSA for a developmental evaluation for [Bob].
- f. Transportation to and supervision of visits between [Dana], [Bob], and ... [mother].
- g. Consistent communication with ... [mother's] treatment providers and support system.
- h. Home studies of and placement with children's respective fathers.

The trial court made similar findings as to “reasonable efforts” in the adjudication and review orders prior to the 20 July 2010 order. Yet these findings do not address any efforts made in regard to respondent-father beyond the home study which resulted in Dana's placement with him, and these actions obviously occurred prior to Dana's placement with respondent-father and thus prior to DSS's removal of Dana from respondent-father's home. While findings regarding “reasonable efforts” are not required at the permanency planning hearing, such findings should have been made regarding respondent-father at the previous hearings when DSS retained custody of Dana. *See* N.C. Gen.Stat. § 7B–507 (2009) (“(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order: ... (2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile....”). Although Dana was initially removed from her mother, she was later placed by DSS with respondent-father. Yet once Dana was placed with him, our record does not demonstrate any “reasonable efforts” by DSS to assist him in parenting Dana or to address the conditions which caused DSS to remove her from his home. Although DSS developed a case plan and made “reasonable efforts” to assist Dana's mother, it appears that both the trial court and DSS failed to consider that “reasonable efforts” may be required as to both parents where, as here, DSS had removed the minor child from both parents separately. As best we can tell from the record before us, it is possible that findings regarding “reasonable efforts” may be absent because DSS did not make any “use of preventive or reunification services” in regard to respondent-father. N.C. Gen.Stat. § 7B–101(18).