

Court of Appeals Addresses Temporary Suspension of Supervised Visits in an A/N/D Order

Earlier today, the Court of Appeals published [In re K.M.](#), an opinion that examines a trial court's permanency planning order awarding supervised visitation between a mother and her child but temporarily suspending that visitation because of the COVID-19 pandemic. For more than a year, pandemic restrictions have been imposed by state and local orders as well as by decisions made by individual businesses and agencies. These restrictions have impacted some court orders of visitation between parents and children that were either in effect or entered during this period. Most often, the impact has resulted in the reduction of a parent's time with their child – either by suspending in-person visits, converting in-person visits to electronic communication, or reducing the length or frequency of visits. Questions about the appropriateness of and/or authority to make those changes to visitation orders with or without court approval have been raised. Today's appellate decision is the first opinion that discusses this issue. However, the basis for a temporary suspension of visits is not necessarily unique to the COVID-19 pandemic. This opinion may provide guidance for the suspension of visits generally.

The Facts

In 2019, the court adjudicated K.M. as neglected and dependent based on circumstances created by his parents' ongoing issues related to their mental health, substance use, and domestic violence, all of which impacted their ability to provide proper care and supervision. K.M. was placed in DSS custody, and his parents were awarded supervised visitation. The court held numerous permanency planning hearings where K.M. continued to remain in an out-of-home placement. In March of 2020, in response to COVID-19 restrictions, the parents agreed to temporarily suspend their in-person visitation and participate in electronic visitation. K.M.'s mother participated in electronic visitation from March 28 through May 21, 2020. In August 2020, a permanency planning order was entered that ordered mother have visitation at a supervised visitation facility. The order also suspended that visitation temporarily because the facility was closed due to COVID-19. Mother appealed.

The Visitation Order

The order provided for the statutorily required minimum frequency, duration, and level of supervision of visits. See G.S. 7B-905.1(a).

The Findings of Fact

The findings of fact identified mother's volatile and uncontrolled temper and her inability to comply with the terms of the court orders. Because of mother's conduct, the trial court found that supervised visitation was required and that supervision provided by a relative, the guardians, or

anyone other than someone trained in supervision techniques and strategies would pose a risk of harm to the child and would be inconsistent with his health and safety. The trial court also found that the visitation center is not currently operating due to the COVID-19 pandemic and has not provided a date for re-opening.

The Visitation Provisions

Mother was awarded two visits a month for two hours, to take place at the Family Abuse Services (FAS) supervised visitation program or other supervised visitation program with a similar cost and structure and within a reasonable driving distance. The order required eyes and ears on direct supervision. The order further decreed that in-person visits outside of a supervised visitation facility was contrary to the child's best interests. As such, the order suspended the in-person visits until FAS reopens or another similar program is identified and is open. During the suspension of in-person visits, mother was permitted to have weekly video contact with her 2-year-old son for 15–30 minutes, depending on her son's attention span, to be supervised by the guardians.

Mother's Challenge Regarding Suspension of Visits

Mother made two arguments on appeal about the visitation suspension. First, the trial court erred when suspending the visitation order because it "effectively eliminate[d] the very visitation the trial court ordered." Sl.Op. ¶19. Second, the findings and evidence did not support the trial court's conclusion that it was contrary to the child's best interests to have face-to-face visits. Mother's appeal did not challenge any findings of fact but rather focused on the conclusion of law and decretal provisions of the order.

The Court of Appeals Opinion: Affirmed

A dispositional (including visitation) order is reviewed for an abuse of discretion, meaning the "ruling is so arbitrary that it could not have been the result of a reasoned decision." Sl.Op. ¶18. The appellate court looks to whether there is competent evidence in the record to support the findings and whether the findings support the conclusion of law. Unchallenged findings are deemed to be supported by the evidence and are binding on appeal.

The Trial Court's Determination

The trial court made two independent determinations: "(1) that only a specific, narrowly defined supervised visitation with Respondent-Mother would be in [the child's] best interests; and (2) that the COVID-19 pandemic rendered that specific supervised visitation temporarily unavailable." Sl.Op. ¶23.

The Analysis

The trial court placed a reasonable limitation on the suspension of in-person visits, which was limited to the specified facility reopening or another adequate supervised visitation center becoming available. The findings that no other supervisor or supervised setting would be appropriate demonstrated that “the trial court plainly considered – and rejected – alternative forms of visitation and specifically concluded that [the child’s] best interests would be best served by limiting Respondent-Mother to visitation at a supervised visitation facility”. Sl.Op. ¶25. Because the trial court determined other appropriate forms of visitation was not in the child’s best interests, it provided for visitation that it determined was in the child’s best interests. The trial court also exercised its authority under G.S. 7B-905.1(a) to specify the conditions under which visitation may be suspended. The court temporarily suspended mother’s visits until safe and appropriate supervision was available. Although the trial court could have ordered no visitation, it provided mother with a contingency, electronic communication, until the specific form of supervised visits it found to be in the child’s best interests was available.

In her argument, mother relied on *In re T.R.T.*, 225 N.C. App. 567 (2013), which applied the language of G.S. 50-13.2(e) that electronic communication is not a substitute or replacement for visitation, and held that visitation by Skype was not visitation as provided for in the Juvenile Code. The court of appeals distinguished *In re K.M.* from *In re T.R.T.* where the court did not make findings about visitation being contrary to the child’s best interests. Here the trial court made findings that any visitation other than supervised visitation at a facility would be inappropriate. Also, unlike *In re T.R.T.*, the temporary suspension in this order was not a replacement or substitution for visitation.

Applying the Holding of *In re K.M.*

COVID-19 and Suspending Visitation

This opinion examines the circumstances in this one case. The trial court made the appropriate findings required by G.S. 7B-905.1 regarding the child’s best interests and the level of supervision required. Had those findings not be made, the result likely would have been different. In fact, the court of appeals vacated and remanded the order in part for the trial court to address the costs of the supervised visitation based upon a different issue raised by mother.

The opinion also applies the provision of G.S. 7B-905.1(a) that authorizes a trial court to specify conditions under which visitation may be suspended. There is a similar provision in G.S. 7B-905.1(b) that authorizes a DSS to temporarily suspend all or part of a visitation plan if it makes a good faith determination that it is contrary to the child’s health and safety. The opinion does not address G.S. 7B-905.1(b). This opinion should not be relied upon as an affirmation that any blanket suspension of visits that do not specifically address the facts of an individual case is authorized simply because of the restrictions of COVID-19. Here, the trial court considered alternatives for visitation and determined all but one method of visitation was contrary to the child’s health and safety. This opinion is a reminder that the motto one size fits all does not apply to visitation orders

in an A/N/D case.

Other Reasons for Suspending Visitation

COVID-19 is not the sole reason why court-ordered visits may need to be suspended. This opinion should not be read to limit the basis for why a trial court may suspend visits. There may be a variety of factors that present in a particular case that a court may consider, such as a parent with substance use disorder appearing to be actively impaired by substances when arriving for a visit. The trial court should include specific findings of fact that support its determination that visits may be suspended when certain conditions exist.

The Importance of Contingency Planning

This opinion provided for two different contingencies regarding mother's visitation. The first was to allow for electronic contact in lieu of having no contact at all while the supervised visitation center was closed. The second was to allow for a different supervised visitation center than the one specifically named to be an option. If an order identifies a particular location for visits or drop-off/pick-ups to occur, it may be beneficial to all the parties to provide for a contingency location in the order. There is no guarantee the one identified location will always be available and accessible. Identifying a second location or the criteria for a second location to be selected by a designated person or agency (e.g., the guardian) may avoid a loss of visits and/or additional litigation requiring an order addressing a needed new location.