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Initial Disposition and the Responsibility of DSS to Provide Reunification Efforts in A/N/D Cases

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When children are removed from their home through a court order in an abuse, neglect, or dependency (A/N/D) action, a county department of social services (DSS) is required to provide reasonable efforts for reunification. *See* G.S. 7B-507(a)(2); 7B-903(a3). "Reasonable efforts" are defined in part 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" G.S. 7B-101(18). "Return home or reunification" is defined as the "[p]lacement of the juvenile in the home of either parent or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order." G.S. 7B-101(18c). This means reasonable efforts for reunification (sometimes referred to as "reunification efforts") must occur for both parents and if there is a guardian or custodian from whom the child was removed, that guardian or custodian as well. However, the Juvenile Code (G.S. Chapter 7B) authorizes the court to relieve DSS of the obligation to provide reasonable efforts for reunification. When the court may enter such an order is limited to an initial dispositional hearing or a permanency planning hearing. The findings a court must make before relieving DSS of making reasonable efforts for reunification differs at initial disposition and permanency planning. *Compare* G.S. 7B-901(c) *with* 7B-906.2(b); *see* *In re T.W.*, 250 N.C. App. 68 (2016). What is required at initial disposition? Our appellate courts have provided some guidance.

The Initial Dispositional Hearing

In an A/N/D action, the court engages in a two-step process: the adjudication hearing to determine whether the child is an abused, neglected, or dependent juvenile, and if so, the initial dispositional hearing. *In re K.W.*, 272 N.C. App. 487 (2020). The initial dispositional hearing is informal, where the court may consider evidence that is relevant, reliable, and necessary to determine the juvenile's needs and most appropriate disposition. G.S. 7B-901(a). The hearing focuses on the child's best interests. *In re K.W*. At initial disposition, the court addresses any missing parents, whether paternity is an issue, identification of and notice to any relatives or persons with legal custody of the juvenile's siblings, the child's placement and custody, evaluations of the juvenile and/or respondents, conditions imposed on respondents (e.g., a case plan), and visitation. *See* G.S. 7B-901(b), 7B-903, 7B-904, 7B-905.1. Additional issues are

addressed when the court orders the juvenile into DSS custody. *See* G.S. 7B-903.1. One of those additional issues is whether DSS is relieved of reasonable efforts for reunification with a parent. G.S. 7B-901(c).

Relieving DSS of Making Reasonable Efforts for Reunification at Initial Disposition

G.S. 7B-901(c) governs when and under what circumstances the court may relieve DSS of making reasonable efforts for reunification at initial disposition.

First, the initial dispositional order must place the juvenile into the custody of DSS. G.S. 7B-901(c). When a child is not placed in DSS custody at initial disposition, the provisions of G.S. 7B-901(c) do not apply. *In re H.L.*, 256 N.C. App. 450 (2017).

Second, the court must make written findings of fact that one of the factors specified in the statute exists. The different factors are organized by type into three different sets. *See* G.S. 7B-901(c)(1)–(3). All three sets of factors are required to be included in our state plan for federal financial assistance. *See* 42 U.S.C. 671(a)(15)(D).

The first set of factors consist of six "aggravating circumstances." Each state defines their own "aggravating circumstances." *See* 42 U.S.C. 671(a)(15)(D)(i). North Carolina has done so in G.S. 7B-901(c)(1), and they are

- sexual abuse,
- chronic physical or emotional abuse,
- torture,
- abandonment,
- chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the juvenile, or
- any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect.

The court hearing the A/N/D case or another court of competent jurisdiction must determine or have determined the parent committed, encouraged the commission of, or allowed the continuation of one of the aggravating circumstances against the child. G.S. 7B-901(c)(1). An order that references "aggravating circumstances" without a statutory citation is sufficient to invoke G.S. 7B-901(c); however, merely stating there are aggravating circumstances without an

explanation of what those circumstances are is insufficient to support an order to relieve DSS of reunification efforts. *In re L.N.H*., 382 N.C. 536, 548 (2022). There must be written findings that explain the aggravating circumstances. *In re B.L.M.-S.,* 901 S.E.2d 687, 692 (2024).

Some of these aggravating circumstances have been interpreted by our appellate courts.

In interpreting the meaning of chronic physical abuse, the court of appeals looked to the common definition of "chronic", which is "lasting a long time or recurring often[.]" *In re B.L.M.-S*. As a result, chronic physical abuse requires that the abuse must have occurred on more than one occasion; a single incident, no matter how severe, is not chronic. *In re N.N*., 907 S.E.2d 430 (2024). However, there is not a time period that must be satisfied for chronic physical abuse to have occurred. For example, chronic physical abuse occurred on an infant who was only two months old, and although father argued two months is not chronic, the court of appeals disagreed. Father admitted his actions occurred on more than one occasion, and the infant suffered two separate injuries on two separate occasions. *In re B.L.M.-S*. Although these opinions involve physical abuse, the focus is on the term "chronic". These interpretations can, therefore, apply to the aggravated circumstance of chronic emotional abuse.

Another aggravating factor – "any *other* act, practice or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect" – has been examined by the NC Supreme Court. *See* G.S. 7B-901(c)(1)f (emphasis added). The supreme court held the use of the word "other" requires that the evidence and findings for this aggravating circumstance must "involve something in addition to the facts that rise to the initial adjudication of abuse and/or neglect." *In re L.N.H*.; *see In re N.N.* (applying this holding). For example, in *In re L.N.H*., the infant was adjudicated abused and neglected based on mother, who was intoxicated, burning the infant's feet, which required hospitalization; punching the infant in the abdomen; and spraying some sort of liquid in the infant's face while then leaving the infant unaccompanied on the porch. If, however, the child being left unaccompanied on the porch and mother's delay in obtaining medical treatment for the child were not part of the adjudication, those facts likely would have supported a finding under this aggravated circumstance.

Abandonment as an aggravating circumstance has not been addressed by our appellate courts; however, there are many opinions that define abandonment in the context of neglect as well as a ground to terminate parental rights. The appellate courts have described abandonment as "willful or intentional conduct" that "evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." *Pratt v. Bishop*, 257 N.C. 486, 501 (1962). A parent abandons a child and relinquishes all parental claims when the parent withholds their love, care, and presence; forgoes the opportunity to display filial affection; and does not provide support and maintenance. *In re C.B.C*., 373 N.C. 16 (2019); *In re E.H.P*., 372 N.C. 388 (2019); *Pratt v. Bishop*.

The second set of factors consists of one situation: the parent's rights to another child were involuntarily terminated by a court of competent jurisdiction. G.S. 7B-901(c)(2); *see* 42 U.S.C. 671(a)(15)(D)(iii). Evidence (including a stipulation) of the prior termination of parental rights (TPR) must be admitted at the initial dispositional hearing. *See In re M.S.*, 289 N.C. App. 127 (2023). This factor is a collateral legal consequence of a TPR.

The third set of factors involve criminal conduct. Specifically, these factors require that a court of competent jurisdiction determines or has determined that the parent (i) committed murder or involuntary manslaughter of another one of the parent's children; (ii) aided, abetted, attempted, conspired, or solicited the murder or involuntary manslaughter of this child or another one of the parent's children; (iii) committed felony assault that resulted in serious bodily injury to this child or another one of the parent's children; (iv) committed sexual abuse against this child or another one of the parent's children; or (v) has been required to register as a sex offender on a government-administered registry. G.S. 7B-901(c)(3); *see* 42 U.S.C. 671(a)(15)(D)(ii); 42 U.S.C. 5106a(b)(2)(B)(xvi).

Our appellate courts have identified felony assault on the child that resulted in serious bodily injury as a factor a trial court may find to relieve DSS of making reunification efforts when an abuse adjudication is based on facts that satisfy the elements of felony assault. The appellate courts have raised this factor, G.S. 7B-901(c)(3)(iii), when there was an adjudication of abuse but there was not additional evidence to support the G.S. 7B-901(c)(1)f. aggravating circumstance of any other act, practice, or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect. Although the aggravated circumstances under G.S. 7B-901(c)(1)f. does not exist, felony assault under G.S. 7B-901(c)(3)(iii) may. *See In re L.N.H*. and *In re N.N*. (both remanded for the trial court to address G.S. 7B-901(c)(3)(iii) factors).

The Court's Discretion, the Order, and Next Steps

If the court makes a written finding at initial disposition that one of these factors exists, the court "shall direct that reasonable efforts for reunification as defined in G.S. 7B-101 shall not be required…, unless the court concludes that there is compelling evidence warranting continued reunification efforts." G.S. 7B-901(c). There is no requirement that DSS must first ask that they be relieved of making reunification efforts before the court can enter such an order. *In re B.L.M.-S*. The court employs its discretion when deciding whether to relieve DSS of making reunification efforts so long as the requirements of G.S. 7B-901(c) are met. *See In re L.N.H*. (dispositional choices are reviewed for an abuse of discretion).

In practice, courts and practitioners often refer an initial dispositional order that relieves DSS of making reunification efforts as an order that ceases reunification efforts. A recent court of appeals decision remanded an initial disposition order that stated reunification efforts "are hereby ceased" back to the trial court to "conform to the pertinent statutory language." *In re B.L.M.-S*. at 694. In its opinion, the court of appeals did not address supreme court holdings that

state the exact statutory language need not be used so long as the concerns of the statute are addressed. *See In re J.M.*, 384 N.C. 584 (2023); *In re L.M.T.*, 367 N.C. 165 (2013) (superseded by statute). Best practice is to use the actual statutory language.

The initial dispositional order must be entered no later than thirty days from the when the hearing is completed. G.S. 7B-905(a). When reunification efforts are not required, the court must schedule a permanency planning hearing within thirty days. G.S. 7B-901(d). At the permanency planning hearing, reunification with the parent for whom DSS is not required to make reunification efforts is not an available permanent plan. This is because reunification is "excluded and omitted from the permanent plans." *In re R.G.*, 292 N.C. App. 572, 580 (2024). The effect of this is that the permanency planning order that does not include reunification with that parent is not an appealable order under G.S. 7B-1001(a)(5) and (8) because reunification is not eliminated as a permanent plan. *Id.* Instead, the parent must appeal the initial dispositional order under G.S. 7B-1001(a)(3). *Id.*

This entry was tagged with the following terms: abuse neglect and dependency, department of social services, reasonable efforts, reunification, reunification efforts.

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