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What Makes It “Relevant”?

Decoding N.C.G.S. § 7B-101(15)

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Have you ever had a case where a child was adjudicated neglected based solely (in your opinion) on the abuse or neglect of another child in the home?

A neglected juvenile is one whose parent ...

- a. Does not provide proper care, supervision, or discipline.
- b. Has abandoned the juvenile, except safe surrender.
- c. Has not provided or arranged for the provision of necessary medical or remedial care.
- d. Not following delinquency team recommendations.
- e. Creates or allows to be created a living environment that is injurious to the juvenile's welfare.
- f. Has participated or attempted to participate in the unlawful transfer of custody of the juvenile under G.S.14-321.2.
- g. Has placed the juvenile for care or adoption in violation of law (redundant).

What's the catch?

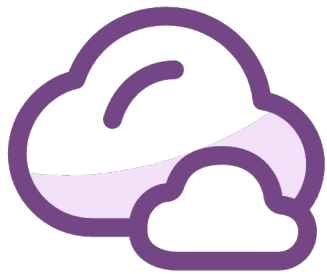
In determining whether a juvenile is a neglected juvenile, it is relevant

whether that juvenile lives in a home

where another juvenile has died as a result of suspected abuse or neglect or

lives in a home where another juvenile has been subjected to abuse or neglect

by an adult who regularly lives in the home.

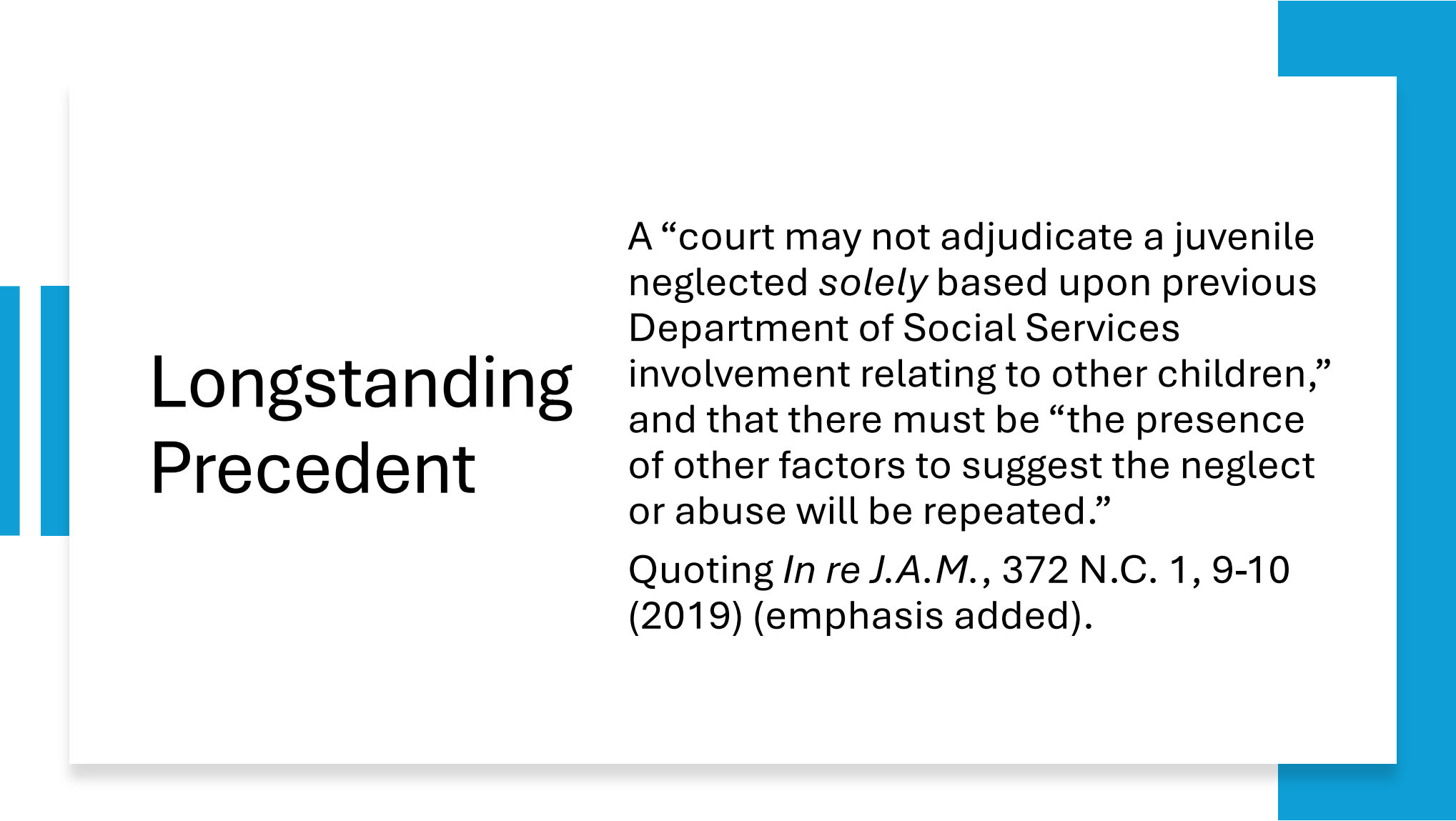


What challenges come to mind in light of those words in the definition?



In re E.H., p. 9

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Longstanding Precedent

A “court may not adjudicate a juvenile neglected *solely* based upon previous Department of Social Services involvement relating to other children,” and that there must be “the presence of other factors to suggest the neglect or abuse will be repeated.”

Quoting *In re J.A.M.*, 372 N.C. 1, 9-10 (2019) (emphasis added).

CATCH-22

The catch ...

“other factors” can be circumstances surrounding the abuse itself that indicate other children in the home could face similar harm.

Quoting *In re A.J.L.H.*, 384 N.C. 45, 55 (2023).

In re A.J.L.H., 384 N.C. 45, 56 (2023)

- How and why the harm occurred,
- Whether other children in the home could be subject to the same harm,
- Whether the parents display a willingness to “remedy the injurious environment” that caused the harm so that it cannot occur again.

Facts that demonstrate a parent's unwillingness to remedy the injurious environment

- 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.”

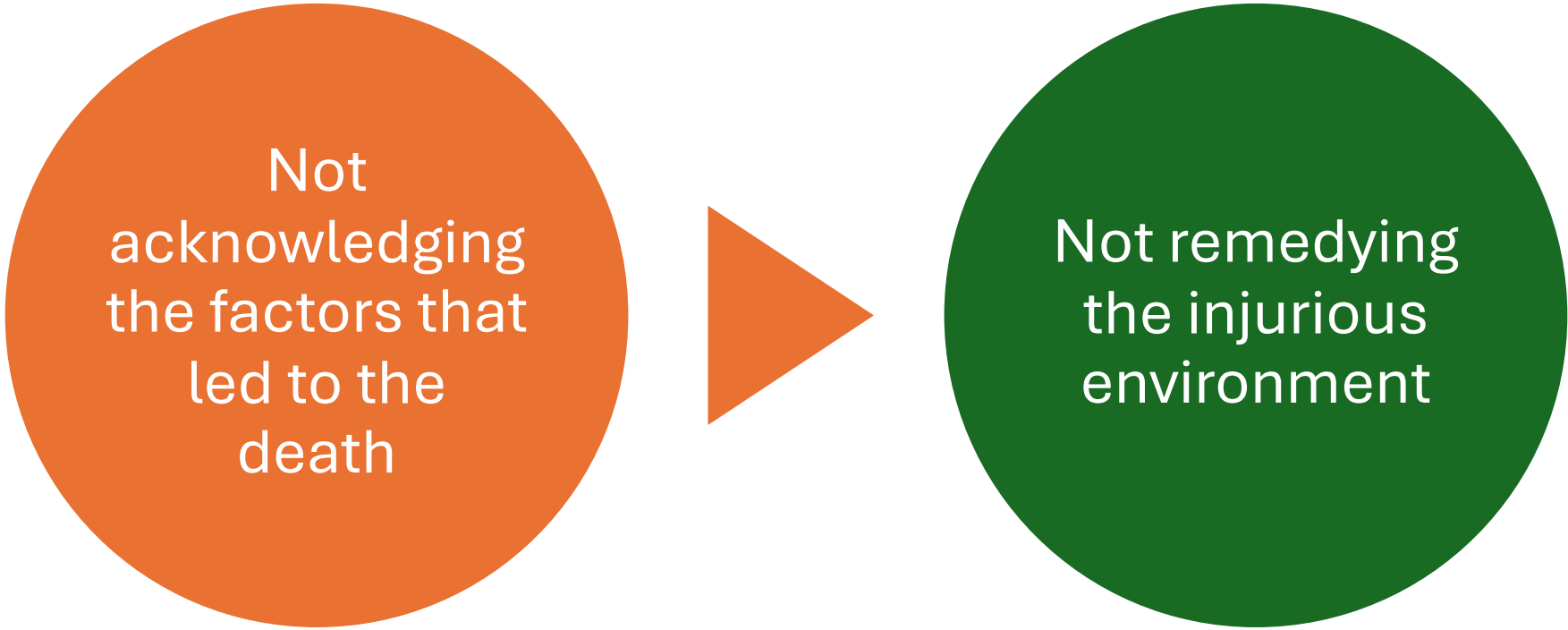
In re D.W.P. 373 N.C. 327, 340 (2020):

- Respondent-Mother failed to acknowledge her responsibility;
- She was unable to pinpoint the cause of the younger sibling's injuries.
- These findings supported the conclusion that the neglect was likely to reoccur.

In re A.W., 377 N.C. 238, 248-49 (2021)

- Another child died in the mother's care
- Mother continued to provide the implausible explanation
- The court could not determine what caused the sibling's death

Legal conclusion:



Not
acknowledging
the factors that
led to the
death

The diagram consists of two large circles. The left circle is orange and contains the text 'Not acknowledging the factors that led to the death'. An orange triangle points from this circle to a green circle on the right. The green circle contains the text 'Not remedying the injurious environment'.

Not remedying
the injurious
environment

In re A.J.L.H.

Parents admitted to
the facts constituting
the abuse

•BUT

They refused “to
recognize that it was
abuse”

=

They were unable “to
commit to never
repeating it”

Factors for R.H. (E.H.'s older brother)

- Similar “tender” age (2 & 4)
- Respondent provided no plausible explanation for E.H.'s injuries;
- Respondents were “responsible” for E.H.'s injuries

Respondents “continue to maintain that they are not responsible for these injuries, and as such, this renders their home an injurious environment for any juvenile as there are no reasonable means to protect any juvenile from a similar injury occurring in the home.”



What's the takeaway?

“When a child is severely abused in the parents’ care, and the parents cannot provide any plausible explanation for how those injuries occurred or assure social workers that the abuse will not happen again, the trial court properly can find that there is an unacceptable risk of similar abuse to other children in the same home.”



Is there a silver lining?

Bernat Casero - www.bernatcasero.com

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Footnote 1:

Of course, the trial court is not *required* to make these findings, and there are certainly circumstances in which a trial court could find that other children in the same home are not at risk of similar harm – for example, because of a large difference in age.



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What facts
can help you
disentangle
the children?



What to argue:



Is this
severe
abuse or
neglect?



Is there a
plausible
explanation
?



What would
they do
differently
to prevent
this from
happening?

Differentiate the
children!



ANY QUESTIONS?

WHEN? WHERE? WHAT? HOW? WHO? WHY?



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