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NC Supreme Court Opinion Clarifies and Changes Findings Required in A/N/D Orders



This entry was contributed by Sara DePasquale on January 21, 2025 at 7:38 am and is filed under Child Welfare Law.

On December 13, 2024, the NC Supreme Court published *In re L.L.*, an appeal of a permanency planning order (PPO) that awarded custody to a non-parent. In the PPO, the court awarded permanent custody to the child's foster parents rather than the child's maternal grandfather. In achieving this permanent plan, the court eliminated reunification with the child's mother as a permanent plan. The issues for appeal focused on whether the trial court made the necessary statutory findings for placement with a non-relative and for eliminating reunification as a permanent plan. The Court of Appeals held the required findings were not made. *See* 291 N.C. App. 402 (2023) (unpublished). The Supreme Court reversed the Court of Appeals and addressed what findings are required for both non-relative placement and the elimination of reunification as a permanent plan. The answer may surprise you and will have an impact on court orders moving forward.

The Relevant Facts in *In re L.L.*

At one month old, Liam* suffered multiple traumas resulting in severe injuries and his hospitalization. His injuries have life-long repercussions. His extensive needs require 24-hour care and constant medical consultations and appointments, some weekly, some bi-annually, and some on a regular basis. He is diagnosed with cerebral palsy, continued seizures, developmental delay, and a possible intellectual disability, and cannot fully use his right arm and hand.

While Liam was hospitalized, the department of social services (DSS) filed a petition alleging Liam was abused and neglected based on the non-accidental injuries Liam endured while in the sole care of his parents. Liam was adjudicated abused and neglected. After being discharged from the hospital, Liam was placed with his foster family and has remained there for years. His foster mother is home to provide the care that Liam needs, and she schedules and takes Liam to his medical appointments. Liam does not understand being away from his foster mother, and his therapists agree that his condition will deteriorate if he is removed from her care.

Liam's mother moved to Georgia and entered into a case plan with DSS. Part of the case plan, which is court ordered, requires her to participate in Liam's medical appointments. She has not participated in any of his medical appointments.

Liam's maternal grandfather, who also lives in Georgia, expressed his interest in having custody of Liam. The grandfather admits he barely knows Liam and works full-time. His live-in girlfriend would care for Liam while he works.

At the first three permanency planning hearings, the court ordered concurrent plans of reunification and custody with a court-approved caretaker. At the fourth permanency planning hearing, Liam's GAL recommended Liam remain with his foster family, and DSS recommended that Liam be placed with his grandfather. The court entered an order that achieved the permanent plan of custody with the foster parents, and reunification with mother was eliminated. Mother appealed the order, arguing the findings were insufficient under the statutes. The Court of Appeals agreed with mother, but the NC Supreme Court granted a petition for discretionary review, reversed the Court of Appeals, and affirmed the trial court's PPO.

Standard of Review

A de novo review is applied to statutory interpretation. A trial court's dispositional choices are reviewed for an abuse of discretion. Eliminating reunification is one dispositional choice. The trial court's guiding principle in making a dispositional choice is the child's best interests; that is the "polar star." Sl. Op. at 9.

Placement with a Relative or Non-Relative

No specific findings are required by G.S. 7B-903(a1). Both federal and state law have a preference for a child's placement with a relative when the child is going to be placed outside of their home. See 42 U.S.C. 671(a)(19); G.S. 7B-903(a1). Under G.S. 7B-903(a1), "the court *shall first* consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home." Sl. Op. at 20 (emphasis in original). If the court finds there is such a relative, "then the court *shall order* placement of the juvenile with the relative *unless* the court finds that the placement is contrary to the best interests of the juvenile." *Id.* (emphasis in original).

In a significant departure from previous Court of Appeals opinions holding that G.S. 7B-903(a1) "requires an arrangement of written findings," the Supreme court held that there is no written findings requirement under the statute. Sl. Op. at 22, n.7. Instead, the trial court must consider—as opposed to make findings about—whether there is a relative who is willing and able to provide proper care and supervision. This holding supersedes Court of Appeals opinions that state otherwise and require a remand when findings are not made. See, e.g., *In re A.N.T.*, 272 N.C. App. 19 (2020). This holding does not conflict with federal law as 42 U.S.C. 671(a)(19) requires the court to consider the preference of placing the child with an adult relative over a non-relative caretaker but does not have a findings requirement.

Consideration of a placement with a relative is not made in a vacuum. Under prior Court of Appeals holdings, after the trial court found there was a relative who was willing and able to provide proper care and supervision to the child in a safe home, the trial court considered whether placement with a relative was in the juvenile's best interest. The trial court did not analyze the child's possible placement with a non-relative unless it first found that the child's placement with the relative was not in the child's best interest. The Supreme court in *In re L.L.*, however, stresses that consideration of placement with a relative and the child's best interests is not made in a vacuum. Instead, the trial court considers and compares all the placement options. Of concern to the dissent in *In re L.L.*, the majority held that it was proper for the trial court to consider why placement with Liam's foster parents was better for him than placement with his grandfather. The majority determined that the trial court's findings showed the trial court did consider placement with the grandfather when it addressed the lack of contact Liam had with his grandfather (and grandfather's girlfriend) and the impact of grandfather's work schedule on his ability to provide the care that Liam needs. The majority held that the findings about Liam's bond with his foster family and the care they have provided to him "adequately demonstrate that placement with the maternal grandfather was not in Liam's best interests." Sl. Op. at 24.

Less Findings Required for Eliminating Reunification

Permanency planning hearings are governed by several statutes, including G.S. 7B-906.1 and 7B-906.2, which both contain requirements related to findings the trial court must make.

Findings under G.S. 7B-906.1. In *In re L.L.*, the Supreme Court examined G.S. 7B-906.1(e), which states "at any permanency planning hearing where the juvenile is not placed with a parent, the [trial] court shall [] consider the following criteria and make written findings *regarding those that are relevant*." Sl. Op. at 10 (emphasis in original). Six factors are then listed. One of the factors is "[w]hether it is possible for the juvenile to be placed with a parent within the next six months...." *Id.* The Supreme Court held that because statutory construction requires that all the words in a statute must be given effect, the plain language of G.S. 7B-906.1(e) only requires written findings of relevant criteria rather than making findings of each listed factor. It is the trial court that "has discretion to determine which factors were relevant." Sl. Op. at 11. And, when "factors are uncontested there is no reason for the trial court to make written findings about them." Sl. Op. at 12. The Court of Appeals determined the trial court's failure to make this finding was error; however, the Supreme Court determined the finding was not required because it was uncontested that Liam could not be placed with his mother in the next six months. The issue at the permanency planning hearing was whether Liam should remain with his foster family or be transferred to his grandfather's care; it was undisputed he would not be placed with his mother.

When a finding is made, the exact statutory language is not required so long as the substance of the statute is addressed. See Sl. Op. at 13, 15, 16 (*citing In re J.M.*, 384 N.C. 584, 594 (2023); *In re L.M.T.*, 367 N.C. 165 (2013)). Although the G.S. 7B-906.1(e) finding was not required, the Supreme

Court explained that the trial court's consideration of this factor could be reasonably inferred from other findings in the order. For example, the trial court found that the parents never provided a plausible explanation for Liam's injuries while he was in their sole care. Failing to resolve the problem that resulted in Liam's removal creates the plausible inference that Liam could not be placed with either parent. Additionally, findings that the mother never attended any of Liam's medical appointments satisfied G.S. 7B-906.1(e) by demonstrating the court considered whether placement with mother was unlikely within the next six months.

Findings under G.S. 7B-906.2. When the court is eliminating reunification as a permanent plan, the court makes certain findings under G.S. 7B-906.2. There are two specific subsections that require findings. Subsection (b) requires a finding that "reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety." Sl. Op. at 14. Subsection (d) includes 4 factors, "which shall demonstrate the degree of success or failure toward reunification." Sl. Op. at 15. In *In re L.L.*, the Supreme Court reversed the Court of Appeals' holding that the trial court failed to find the factors under G.S. 7B-906.2(d)(2) through (d)(4) and 7B-906.2(b).

In a significant departure from previous opinions, the Supreme Court held that G.S. 7B-906.2(b) ("reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety") and 7B-906.2(d)(4) (whether the parent is acting inconsistently with the child's health or safety) are synonymous. Two separate findings are not required.

In making findings that Liam was abused and suffered severe injuries while in mother's care, that mother never provided a plausible explanation for Liam's injuries, that mother was charged with felony child abuse, and that she failed to comply with court orders requiring her to attend Liam's medical appointments, the substance of the statute's concerns was addressed. Further, precedent has "held that a parent's failure to offer an honest explanation for his or her child's injuries while the child was in that parent's sole custody can satisfy N.C.G.S. §§ 7B-906.2(b) and 7B-906.2(d)(4)." Sl. Op. at 17. This finding alone is sufficient. The order in *In re L.L.* not only made this finding but made additional findings about mother's failure to make any efforts to understand Liam's needs.

In another significant departure from previous opinions, the Supreme Court stated "[t]he trial court has discretion whether to make written findings under N.C.G.S. § 7B-906.2(d)... [and is] not required to mechanically recite" inapplicable subfactors of G.S. 7B-906.2(d). Sl. Op. at 19-20. In interpreting the language of G.S. 7B-906.2(d), which states that the court "shall" make written findings for "each" of the factors, the Supreme Court determined that the clause that followed "each" limits the trial court's required findings to "[o]nly those factors that demonstrate the degree of success or failure toward reunification...." Sl. Op. at 19. The holding supersedes previous opinions that have remanded cases for failing to make findings on each of the four enumerated factors in G.S. 7B-906.2(d). See, e.g., *In re L.R.L.B.*, 377 N.C. 311 (2021); *In re J.M.*, 271 N.C. App. 186 (2020).

Going further, the Supreme Court stated findings under G.S. 7B-906.2(d)(2) and (d)(3) were made because the trial court incorporated by reference the DSS court report into its final order. When a document is incorporated by reference into an order, “the factual findings contained in those documents – but not their opinions or recommendations – become the findings of the trial court’s order.” Sl. Op. at 19.

Takeaways and Reminders

- *In re L.L.* reduces the number of findings that a trial court is required to make in certain instances that would result in a remand if excluded. But! The Juvenile Code (Chapter 7B of the North Carolina General Statutes) requires the court at dispositional hearings of any type to consider many factors and to make a large number of findings. The holding of *In re L.L.* does not change that.
- The trial court now has discretion to determine what factors are relevant under G.S. 7B-906.2(d). But! A factor that is relevant and is contested still requires a written finding. It will be up to the parties to introduce evidence for each factor.
- The court no longer has to make specific findings about a relative placement. But! The court must still make findings of fact to support its conclusion about a child’s best interests when ordering a specific disposition – whether that is a placement decision or the elimination of reunification.
- There is nothing in this opinion that prevents a trial court from making all the findings, including those that are not required. If there are insufficient findings to support the court’s conclusion, an appeal is still available.

Finally, a note of caution about incorporating documents by reference in an order. Although *In re L.L.* states any findings in that document are findings by the court, an appellate court examines findings to make sure there is sufficient evidence to support the finding and that the trial court determines credibility and how much weight to give evidence. *See, e.g., In re B.J.H.*, 378 N.C. 524 (2021). The order should demonstrate the trial court engaged in a process of logical reasoning to find the ultimate facts and conclusions of law in the order. *See, e.g., In re J.W.*, 241 N.C. App. 44 (2015). The trial court cannot delegate its fact-finding function. *In re J.R.S.*, 258 N.C. App. 612 (2018). Overreliance on those reports and/or the existence of conflicting findings could prove problematic in future cases.

*Liam is the pseudonym for the child in this case.

This entry was tagged with the following terms: abuse neglect and dependency, department of social services, findings of fact, relative placement, reunification.

Sara DePasquale

Sara DePasquale is a Professor at the School of Government specializing in child welfare law (abuse, neglect, dependency, termination of parental rights, and adoption) and juvenile court.
